

# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908

No. 118

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THE STEAMER "PEDRO," SEBASTIAN BONET OLIVERA,  
APPELLANT.

vs.

THE UNITED STATES.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF FLORIDA.

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FILED AUGUST 18, 1908.

(16,957.)

(16,957.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 372.

THE STEAMER "PEDRO;" SEBASTIAN BONET, CLAIMANT,  
APPELLANT,

*vs.*

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF FLORIDA.

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1 In the District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA }  
*vs.* } Prize.  
 STR. PEDRO AND CARGO. }

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida :

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest against the steam vessel Pedro in a cause of prize, alleges :

That, pursuant to instructions from the President of the United States, French E. Chadwick, of the United States Navy, in and with the United States ship of war the New York, her officers and crew, did on the 22 day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said steam vessel Pedro and her cargo, — have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may by the proper process of this court be duly notified of the allegations and prayers of this libel and cited to appear and claim the same ; that the nature, amount, and value of said cargo may be determined, and that, on proper proofs being taken and heard and all due proceedings being had, the said Pedro, together with her tackle, apparel, furniture, and cargo, may on the final hearing of this cause, by the definitive sentence and decree of this court, be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

(S'd)

J. N. STRIPLING,  
*U. S. Attorney, S. D. of Florida.*

Let attachment and motion issue as prayed, returnable 9th day of May, 1898, A. D., at 10.30 a. m.

Entered as of course.

(S'd)

E. O. LOCKE, *Clerk,*  
 By J. OTTO, *D'y Clerk.*

Endorsed : Filed April 23d, 1898. (S'd) E. O. Locke, clerk.



## 2 UNITED STATES OF AMERICA :

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting :

You are hereby commanded forthwith to attach, seize, and take into your custody the Spanish steamer Pedro, her tackle, apparel, furniture, cargo, &c., wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of the United States for prize.

And how you shall have executed this precept make known to the said court, at the court-rooms, in Key West, the 9th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof with your certificate of execution hereon written.

Witness the Honorable James W. Locke, judge of the said court, at Key West, in said district, this 23rd day of April, [SEAL.] in the year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-second.

(S'd)  
(S'd)

E. O. LOCKE, *Clerk*,  
By J. OTTO, *D'y Clerk*.

Endorsed: Filed April 24th, 1898. (S'd) E. O. Locke, clerk.

Received the within writ of attachment April 23rd, 1898, and executed it on the same day, as within commanded, by attaching and taking in custody the Spanish steamer Pedro.

(S'd)

JOHN F. HERR,

*U. S. Marshal*,

(S'd)

By ALFRED ATCHISON,  
*D'y U. S. Marshal*.

## 3 UNITED STATES OF AMERICA :

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting :

Whereas on the 23 day of April, A. D. 1898, the United States of America, by their proctor, Joseph N. Stripling, Esq., filed in the office of the clerk of said court *his* libel against the Spanish str. Pedro in a cause of prize of war, alleging in substance that she was captured by the U. S. flagship New York April 22nd, 1898, as a prize of war.

Wherefore the said libellant pray- that the usual process of attachment may issue against the said Spanish str. Pedro; that monition may issue, citing all parties having or claiming any interest or property in said Sp. str. Pedro to appear and answer upon oath all and singular the matters aforesaid, and that this court will be pleased

to decree to the libellant proceeds of said vessel for services in said cause, and that the said str. Pedro may be condemned and sold to pay said prize money, with costs, charges, and expenses, and that the libellant may have such other and further relief in the premises as in law and justice *he* may be entitled to receive; and whereas the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Monday, the 9th day of May, A. D. 1898:

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any right, title, claim, or interest in or to the said str. Pedro to appear at an admiralty session of said court, to be held in the court-rooms of said court, at Key West, in said district, on Monday, the 9 day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why prize money should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof, and by posting two such other copies in the most public places of Key West, & be published in the K. W. Advertiser once a week for two weeks.

And how you shall have executed this precept make known to this court by a return hereof on or before the 9th day of May aforesaid, with your certificate of execution hereon written.

Witness the Hon. James W. Locke, judge of said court, at Key West, in said district, this 23 day of April, in the year [SEAL.] of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the hundred and twenty-second.

A true copy.

Attest:

(S'd)

(S'd)

E. O. LOCKE, *Clerk*,  
By J. OTTO, *D'y Clerk*.

Endorsed: Filed April 24th, 1898. (S'd) E. O. Locke, clerk.

Received the within writ of monition April 23rd, 1898, and duly executed it on the same day by reading a copy to the master of the Spanish steamer Pedro and posting two copies, as within commanded.

(S'd)

(S'd)

JOHN F. HERR,  
*U. S. Marshal*,  
By ALFRED ATCHISON,  
*D'y U. S. Marshal*.

*(Claim of Master of Pedro.)*

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA	} In Prize.
<i>against</i>	
THE STEAMER PEDRO & HER CARGO.	

And now comes Sebastian Bonet, master, and as such the lawful bailee of the steamer Pedro, and, intervening as such bailee for the interests of the owners of the said steamer, according to the annexed test affidavit, appears before this honorable court and makes claim to the said steamer, her engines, etc., as the same are attached by the marshal, under process of this court, at the instance of the United States of America, under a libel against said steamer, her cargo, etc., as prize of war, and he avers that the said steamer was not and is not lawful prize, and he prays on behalf of the owners of the said steamer, for and in behalf of whom he is duly authorized to make this claim, to be permitted to defend accordingly, and to show cause, pursuant to the terms of the monition herein issued and served upon the said steamship and upon the said master, as bailee, why the said steamship, her engines, etc., were not liable to be treated as enemy's property at the time and place and under the circumstances of the alleged capture, and why she should not be condemned as lawful prize of war, but should be restored, with damages and costs.

(S'd)

S. BONET.

WILHELMUS MYNDERSE AND

G. BOWNE PATTERSON, *Proctors.*

Sworn to before me this May 23rd, 1898.

(S'd)

J. OTTO, *D'y Clerk.*

Endorsed: Filed May 23rd, 1898. (S'd) E. O. Locke, clerk.

*(Test Affidavit.)*

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA	} Test Affidavit.
<i>against</i>	
THE STEAMER PEDRO & HER CARGO.	

COUNTY OF MONROE,  
State of Florida, Southern District of Florida, } ss:

Sebastian Bonet, being duly sworn, deposes and says that he is a citizen of the Kingdom of Spain; that his home is in Majorca, in the Balearic islands, and that he is master of the steamer Pedro, proceeded against in this action, and has been master of said steamer for nine years last past.

Deponent further says that the steamer Pedro was built in Newcastle, England, in 1883, and until 1889 was known as the English steamer Lilburn Tower, at which time her register was transferred from England to Spain, and she has since carried the flag of Spain and has hailed from the port of Bilbao, Spain, where she has been registered in the name of Compania la Flecha, but has at all times been under the management of the house of G. H. Fletcher & Company, of Liverpool, England.

Deponent, upon information and belief, such information having been acquired by communications from England since the examination of deponent in *preparatorio*, further says that the Compania la Flecha is, as he is informed and believes, a corporation organized and existing under and pursuant to the laws of the Kingdom of Spain, the capital being divided into 1,000 shares, of which 200

6 shares are registered in the names of William Rudolph Peter Jackson, a member of the copartnership firm of G. H. Fletcher & Company, of Liverpool, England; 200 shares in the name of Thomas Hughes Jackson, of Liverpool, England; 200 shares in the name of Jose Serra y Font, of Barcelona, Spain; 200 shares in the name of Raimundo Real de Assua, of Bilbao, Spain, and 200 shares in the name of Ramon Real y Assua, Bilbao, Spain, the said William Rudolph Peter Jackson and Thomas Hughes Jackson being domiciled in England and subjects of the United Kingdom of Great Britain and Ireland, and the said Jose Serra y Font, Raimundo Real de Assua, and Ramon Real de Assua being domiciled in Spain and subjects of the Kingdom of Spain; that while the shares of Compania la Flecha have been registered as aforesaid such registration has been merely formal, and the certificates of shares, the possession of which under the constitution of the said company establishes the ownership thereof, have been for many years last past possessed by the said Thomas Hughes Jackson, who has been and still is the true and lawful owner of all of the said 1,000 shares for value and thereby the sole beneficial owner of the said steamer Pedro.

Deponent further states, upon like information and belief and by due authority of the said Thomas Hughes Jackson, that the said steamer has been sailed under the Spanish flag purely and solely for commercial reasons, her trade lying regularly in the line of Europe, Cuba, and the United States, and there being discriminations in favor of vessels carrying the Spanish flag in respect of commerce with the colonies of Spain in consideration of dues paid by such steamers to the government of Spain, and that it has been the

7 purpose and intent of the owner of the Pedro to maintain her in such trade only so long as such trade might be lawfully and peaceably carried on, and to withdraw her from the Spanish registry and from under the Spanish flag and restore her to British registry and the flag of Great Britain whenever such trade should be disturbed; that it had been and is his purpose to make such transfer because of the pending war between the United States and the Kingdom of Spain, but that no opportunity therefor

has been afforded, the steamer having been captured prior to an outbreak of hostilities and before any state of war was known.

Deponent further says that the Pedro has during the nine years that he has known her been engaged in the transportation of cargo for hire as a merchant vessel under the management of the said house of G. H. Fletcher & Company, of Liverpool. Her voyages have begun in Europe, where she has taken such cargo as was procurable for Cuban ports, from which ports, upon discharge of such cargo, she has proceeded to ports of the United States, where she has taken cargo for port of final destination in Europe, either under charter or on the berth, such cargo from the United States being the principal cargo of the round voyage, and the round voyage occupying about three months and she making in regular course about four voyages a year.

Deponent further says that said steamer Pedro has a cargo capacity of about 5,000 tons, or 4,000 dead weight, her net register being 1,618 tons and her gross register 2,800 tons; that between March 20th and March 25th, 1898, she took on board, at Antwerp, Belgium, about 2,000 tons of cargo for Havana, Santiago de Cuba, and Cienfuegos, Cuba, of which 1,700 tons was rice and the remaining portion was hardware, empty bottles, paper, cement, and general cargo. On

the 25th of March, 1898, the Pedro sailed from Antwerp, bound for Pensacola, Florida, via Havana, Santiago de Cuba, and Cienfuegos, Cuba, she then being under charter to the firm of W. S. Keyser & Company, of Pensacola, to proceed to Pensacola to proceed to Pensacola and / or Ship Island, and thence to take a cargo of lumber to Rotterdam or Antwerp. A copy of said charter is hereto annexed, marked "A," and deponent prays that reference be made thereto. Such copy was produced by deponent at his examination *in preparatorio*, but he does not know whether the same was recorded by the prize commissioners in such depositions *in preparatorio*.

Deponent further says that the Pedro on sailing from Europe had less than half a full cargo, and that the entire freight list of her cargo transported for delivery in Cuba did not exceed \$7,000 in money of the United States, and that such sum was not more than sufficient to bear the expenses of receiving, transporting, and delivering such cargo and offered no inducement to bring the vessel across the Atlantic, the sole inducement being the large freight upon the full cargo of lumber to be carried under the aforesaid charter-party, the hire or freight upon which would have been about \$25,000.

The said steamer arrived in Havana on April 17th, 1898, and there discharged about 1,600 tons of her cargo, and on April 22 departed thence for Santiago de Cuba, having taken on board at Havana, on April 20, about twenty tons of general cargo from the steamer Alava, which the said steamer Alava had brought from European ports and desired to tranship to Santiago de Cuba, the same having never been landed in Cuba.

Deponent further says that the said steamer Pedro left Havana for Santiago de Cuba about half after three o'clock in the afternoon of

9 April 22d, 1898, and that he sailed thence ignorant of any state of war between the United States and the Kingdom of Spain and without any notice thereof, and before the outbreak of hostilities between the two nations, and that he did not then or at any time from leaving Antwerp have on board any officers in the military or naval service of the Kingdom of Spain, or any coal except such as was necessary for his voyage, or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

Deponent further says upon information and belief that at about noon of April 22 an American steamer, then lying in the port of Havana left said port, bound for the United States of America, without hinderance from the Spanish authorities and with their usual permission, and that later in the day, and at about six o'clock, another American steamer, the Saratoga, of New York, then lying in said port of Havana, sailed from said port for the United States of America without hinderance from the Spanish authorities and with their usual permission.

Deponent further says that he proceeded upon his voyage until about six o'clock in the afternoon of said April 22, at which time, being then distant about twelve miles easterly from the entrance to Havana harbor, the day being bright and he being without notice of any blockade of the said port of Havana by the United States of America, and being in entire ignorance of said blockade or of any state of war, was fired upon by the United States cruiser New York, and his steamer, Pedro, entirely without resistance on her part, was captured with her cargo by said cruiser New York and was sent into this port of Key West, where they have been libeled as prize of war.

Deponent further says that he is informed and believes that by the existing policy of the Government of the United States of America, as evidenced by repeated declarations of its executive  
10 and by the proclamation of the President of the United States issued and published April 26, 1898, as well as upon principles in harmony with the present views of nations and sanctioned by recent practice, in accordance with which the President of the United States had directed that the war shall be conducted, the said steamer Pedro was not at the time and place and under the circumstances of her seizure liable to be treated as enemy's property, but, on the contrary, having sailed from a foreign port prior to April 21, 1898, and being bound for a port of the United States, was exempt from capture. A copy of said proclamation is hereto annexed, marked "B," and deponent prays that reference may be made thereto.

Deponent further says that since giving his deposition *in preparatorio* he has been informed and believes that his said steamer was at the time of capture and now is insured against all perils and adventures, including the risks of war, for her full value by underwriters of Lloyds, London, and by insurance companies organized and existing under and pursuant to the laws of Great Britain, and that if the said vessel should be condemned as prize by this court



the loss will rest upon and be borne by the said English underwriters, at whose request and by whose authority deponent represents these facts respecting her insurance to the court.

(S'd)

S. BONET.

Sworn to before me this 23rd day of May, 1898.

(S'd)

J. OTTO, *D'y Clerk*.

Endorsed: Filed May 23rd, 1898. (S'd) E. O. Locke, clerk.

11

(*Claim of Edward Twigge.*)

I, Edward Twigge, of 25 Castle street, Liverpool, England, merchant, carrying on business *on business* at the same place without a partner, under the style or firm of "Twigge & Crosfeld," do solemnly and sincerely declare and make oath as follows:

1st. On the 23d day of March, one thousand eight hundred and ninety-eight, I shipped 1,000 bags, each containing two hundred-

H. C.

weight net of cleaned Saigon rice, marked Cienfuegos, from Antwerp, in the Kingdom of Belgium, in the steamship Pedro, of the Flecha line of Spanish steamers, to Messrs. Hartasanchez, Cardona & Co., of Cienfuegos, Cuba, the freight in respect of the same having been paid by me in Antwerp aforesaid prior to the sailing of the said steamship. The five bills of lading attached to this my declaration refer solely to the said 1,000 bags of rice.

2d. The said steamship Pedro was, as I am informed and verily believe, captured off Havana on the 23d of April, 1898, by the United States cruiser New York, before the ultimatum which had been issued by the United States of America to the Kingdom of Spain had expired and before war with that country had been formally declared.

3d. The whole of the said rice was, as I verily believe, on board the said steamship Pedro at the time of her said capture, and is now, as I verily believe, in the possession or control of the United States of America.

4th. The said rice was not insured against war risks, being shipped on the 23d day of March, 1898, before the said ultimatum and declaration of war.

12 5th. The said rice was consigned to the said Messrs. Hartasanchez, Cardona & Co., and I have not received any payment for or in respect of the said rice or any part thereof from any person or persons or company or companies whatsoever.

6th. Under the circumstances aforesaid I respectfully claim delivery of the said rice to myself or my order, and I make this solemn declaration, conscientiously believing the same to be true.

(S'd)

EDWARD TWIGGE.

J. B.

Subscribed and sworn to at the city of Liverpool, in England, this 4th day of May, 1898, before me—

(S'd)

JAMES BOYLE,

[SEAL.]

*Consul of the United States, Liverpool, England.*



Endorsed : Filed May 19th, 1898. (S'd) E. O. Locke, clerk.

(Claim of Edward Twigge.)

District Court of the United States, Southern District of Florida.  
In Admiralty.

THE UNITED STATES  
vs.  
THE STEAMSHIP PEDRO & CARGO. } Prize.

To the Hon. James W. Locke, judge of said court:

And now comes Edward Twigge, by W. J. H. Taylor, his  
13 agent and attorney-in-fact, and says he is a British subject and  
a merchant doing business in the city of Liverpool, England,  
and he claims 1,000 bags of rice, marked H. C., Cienfuegos, being a  
part of the cargo of the steamship Pedro, and he says he is the  
owner thereof.

And he denies that the said 1,000 bags of rice, part of the cargo  
of the said steamship Pedro, are lawful prize of war, as alleged and  
set forth in the libel exhibited and filed in this cause.

Wherefore he prays restitution of the said 1,000 bags of rice.

(S'd)

EDWARD TWIGGE,

By his attorney-in-fact, W. J. H. TAYLOR.

Sworn to and subscribed before — this 19th day of May, A. D.  
1898.

(S'd)

G. BOWNE PATTERSON,

[SEAL.]

Notary Public.

273.

UNITED STATES CONSULATE, LIVERPOOL.

I, the undersigned, consul of the United States of America for the  
port of Liverpool and its dependencies, *ex officio* notary public, do  
certify and make known to whom these presents shall come that on  
the date hereof before me personally appeared Edward Twigge,  
known to me to be the person described in and who executed the  
annexed instrument, and acknowledged the same to be his act and  
deed, and declared that he had executed the same freely and vol-  
untarily to the uses and for the purposes therein mentioned.

Given under my hand and seal of office, at Liverpool, this 4th  
day of May and year of our Lord one thousand eight hun-  
14 dred and ninety-eight.

(S'd)

JAMES BOYLE,

U. S. Consul, *ex Officio* Notary Public.

To all to whom these presents shall come, I, Edward Twigge, of 25  
Castle street, Liverpool, England, merchant, carrying on business  
at the same place, without a partner, under the style or firm of  
Twigge & Crosfeild, send greeting :

Whereas, on the 23rd day of March, 1898, I, the said Edward  
Twigge, shipped 1,000 bags, each containing two hundredweight

net, of cleaned Saigon rice, marked H. C., Cienfuegos, from Antwerp, in the Kingdom of Belgium, in the steamship Pedro, of the Flecha line of Spanish steamers, to Messrs. Hartasanchez, Cardona & Co., of Cienfuegos, Cuba; and whereas the said steamship Pedro was captured off Havana on the 23rd day of April, 1898, by the United States cruiser New York, before the ultimatum which had been issued by the United States of America to the Kingdom of Spain had expired and before war with that country had been formally declared; and whereas the whole of the said rice was on board the said steamship Pedro at the time of her said capture and is now in the possession or control of the United States of America; and whereas I, the said Edward Twigge, claim delivery of the said 1,000 bags of rice, and have this day made and sent to the proper authorities a declaration showing my title to the said rice: Now know all men by these presents that I hereby appoint W. J. H. Taylor, at Key West, in the said United States of America, and the British consul or British vice-consul for the time being at Key West aforesaid, and each of them to be my true and lawful attorneys or attorney for the purposes hereinafter expressed—that

15 is to say, for me and on my behalf to ask, demand, sue for, recover, and receive the said 1,000 bags of rice or the value thereof, and on transfer or delivery thereof or payment of the value thereof or any part thereof respectively to give, sign, and execute receipts, releases, and other discharges for the same respectively; also to state, settle, adjust, compound, submit to arbitration and compromise all actions, suits, accounts, reckonings, claims, and demands whatsoever which are now or hereafter shall or may be depending between me and the said United States of America or any person or persons whomsoever for or in respect of the said rice or the value thereof or any part thereof respectively, and to do, execute, and perform any other act, matter, or thing whatsoever which ought to be done, executed, or performed, or which in the opinion of my said attorneys or attorney ought to be done, executed, and performed in or about the premises aforesaid as fully and effectually to all intents and purposes as I myself could do if I were present, as witness my hand and seal this 4th day of May, 1898.

(S'd)

EDWARD TWIGGE.

Signed, sealed, and delivered by the said Edward Twigge in the presence of—

WM. PIERCE AND  
S. MCCREADY.

Endorsed: Filed May 19th, 1898. (S'd) E. O. Locke, clerk.

16

(*Claim of Carl George Heise.*)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA  
against  
THE STEAMER PEDRO & HER CARGO. } Prize.

Carl George Heise, of Hamburg, Germany, claims 2,500 bags of rice, of which 150 are marked H, 150 are marked H, 200 are marked H, 200 are marked H, 200 are marked H, 100 are marked H, 150 are marked H, 150 are marked H. K., 150 are marked H, 200 are marked H. L., 200 are marked H. F., 150 are marked H A., 150 are marked H. J., 150 are marked H B, and 200 are marked H C, as the true and lawful owner thereof, the same now being proceeded against in the above-entitled action, and the same not being lawful prize of war.

(S'd)

CARL GEORGE HEISE,  
By WILHELMUS MYNDERSE AND  
G. BOWNE PATTERSON,

*His Proctors.*

Sworn to before me this May 23rd, 1898.

(S'd)

J. OTTO, *D'y Clerk.*

WILHELMUS MYNDERSE AND  
G. BOWNE PATTERSON, *Proctors.*

Endorsed: Filed May 23rd, 1898. (S'd) E. O. Locke, clerk.

(*Test Affidavit.*)

17 District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA  
against  
THE STEAMER PEDRO & HER CARGO. }

COUNTY OF MONROE, STATE OF FLORIDA, } ss:  
*Southern District of Florida,*

William H. Fain, being duly sworn, deposes and says that he is a resident of the city of New York and a citizen of the United States of America.

Deponent further says that he is specially authorized by Carl George Heise, of Hamburg, Germany, claimant of 2,500 bags of rice, of which 150 are marked H/DD, 150 are marked H/EE, 200 are

marked H/GG, 200 are marked H/O, 200 are marked H/P, 100 are marked H/M, 150 are marked H/S, 150 are marked H K, 150 are marked H/R, 200 are marked H L, 200 are marked H F, 150 are marked H A, 150 are marked H J, 150 are marked H B, and 200 are marked H C, shipped on the steamer Pedro, to make claim therefor on his behalf.

Deponent further says upon information and belief that the said Carl George Heise is domiciled in Hamburg, Germany, and is a subject of the Empire of Germany.

Deponent further says upon information and belief that on or about the March 20th, 1898, the said steamer Pedro then being in Antwerp, Belgium, bound on a voyage to Havana, Santiago de Cuba, Cienfuegos, Cuba, and Pensacola, Florida, the said Carl George Heise shipped or caused to be shipped on her 2,500 bags of rice, marked as aforesaid, to be transported to the said port of Cienfuegos, and there to be delivered to the order of the shipper, according to the conditions of certain bills of lading issued therefor by said steamer to the said Carl George Heise.

Deponent further says upon information and belief that the said 2,500 bags of rice were shipped for account of said Carl George Heise for sale in Cienfuegos, Cuba, and that the said Carl George Heise was then, ever since has been, and still is the true and lawful owner of the said 2,500 bags of rice, and that he has received no payments or advances or loans from any person or persons thereon, and has made no drafts upon the security of the said rice or said bills of lading, but is still the owner and holder of the said bills of lading and the true and lawful owner of the rice therein referred to.

Deponent further says that thereafter and on or about the 25th day of March, 1898, the Pedro sailed from Antwerp, Belgium, with said rice on board and proceeded on her voyage, and subsequently and on or about the 22nd day of April, 1898, while proceeding out from the port of Havana, and while in ignorance and without notice of any blockade of the said port of Havana and in ignorance of and without notice of any state of war between the United States and the Kingdom of Spain, was, with said cargo, captured by the United States cruiser New York and taken into Key West, where she and her cargo have been libeled as prize of war, though such capture was, as deponent is informed and believes, without due warrant or authority.

Deponent further says that said cargo was not and is not contraband.

Deponent further says that this affidavit is made by him upon information transmitted by cablegram, and that it is necessarily incomplete, and he prays leave, therefore, to supplement the same hereafter, as justice may require.

Wherefore claim is made on behalf of said Carl George Heise, of Hamburg, Germany, to the aforesaid shipment of 2,500 bags of rice, and it is averred on his behalf that the claimant has been the owner of said 2,500 bags of rice from the time of the shipment thereof, and that the said shipment is not and never has been the subject of

lawful prize, and it is prayed that the same may be restored to the claimant.

(S'd)

WM. H. FAIN.

Sworn to before me this 23rd day of May, 1898.

(S'd)

J. OTTO, *D'y Clerk*.

Endorsed: Filed May 23rd, 1898. (S'd) E. O. Locke, clerk.

*(Notice for Further Proof and Order Denying the Same.)*

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA	} In Prize.
<i>against</i>	
THE STEAMER PEDRO & HER CARGO.	

And now comes Sebastian Bonet, master, claimant herein, and upon his test affidavit, herewith filed, and upon all other proceedings in the cause asks leave to take further or additional proofs respecting the matters set forth in the said test affidavit.

20

(S'd)

S. BONET.

Key West, May 27th, 1898.

WILHELMUS MYNDERSE AND  
G. BOWNE PATTERSON, *Proctors*.

Upon consideration, the above motion is denied.

Dated Key West, May 27th, 1898.

(S'd)

JAMES W. LOCKE,  
*U. S. District Judge.*

Endorsed: Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

*(Decree.)*

In the District Court of the United States, Southern District of Florida.

UNITED STATES	} Prize.
<i>against</i>	
SPANISH STEAMER PEDRO AND CARGO.	

This cause coming on to be heard upon the allegations of the libels, the claims of the master, and the several parties of the cargo of said vessel, and it appearing that the vessel was enemy's property and did not come within the exemption of the proclamation of the President of the United States, and that she is subject to condemnation and forfeiture—

It is ordered that as such enemy's property she be condemned and forfeited to the United States as a legal prize of war, and that the marshal proceed to advertise and sell said vessel and deposit the proceeds thereof according to law.

21

It further appearing that the claims of the cargo do not fully prove the ownership of said cargo, it is ordered that the claimants herein have sixty days in which to make further proof.

Key West, Florida, May 27th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

Endorsed : Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

*(Assignment of Errors.)*

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA, Libellants & Appellees,	}
<i>against</i>	
THE STEAMER PEDRO AND HER CARGO ; SEBASTIAN BONET, Claimant & Appellant.	

And now the above-named claimant and appellant comes and makes assignment of error in respect of the decision and decree of the said district court :

First. In that the said district court held that the said steamer Pedro was lawful prize of war.

Second. In that the said district court did not hold that the said steamer Pedro was not lawful prize of war.

Third. In that the said district court did not hold that the said steamer Pedro was privileged and exempt from capture and condemnation as being property owned by neutrals.

22 Fourth. In that the said district court did not hold that the said steamer Pedro was privileged and exempt from capture and condemnation under the fourth article or paragraph of the proclamation issued by the President of the United States of America under date of April 26, 1898, and referred to in the test affidavit of the claimant.

Fifth. In that the said district court did not hold that the said steamer Pedro was privileged and exempt from capture and condemnation under the fifth article or paragraph of the said proclamation.

Sixth. In that the said district court did not hold that the said steamer Pedro was privileged and exempt from capture and condemnation under the other provisions of the said proclamation.

Seventh. In that the said district court did not hold and refused to hold that the said steamer Pedro had, prior to April 21, 1898, sailed from a foreign port bound to a port or place in the United States.

Eight. In that the said district court did not authorize, allow, and order further and additional proofs respecting the matters set forth in the claimant's test affidavit or in respect of any of the matters therein set forth.

(S'd)

WILHELMUS MYNDERSE AND  
G. BOWNE PATTERSON,

*Proctors for Claimant.*

Endorsed: Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

23

(*Petition of Appeal and Order.*)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA, Libellants & Appellees,  
*against*  
 THE STEAMER PEDRO AND HER CARGO; SEBASTIAN BONET,  
 Claimant & Appellant. }

And now Sebastian Bonet, claimant, considering himself aggrieved by the decision and decree of condemnation herein, and alleging error in the said decree, appears in open court and appeals therefrom to the Supreme Court of the United States. He presents herewith an assignment of the errors complained of and a bond for costs, with surety, in the sum directed by the court, and thereupon prays that his said appeal may be allowed, and that the record, including the ship's papers used upon the trial, his test affidavit, and all other proceedings, may be duly certified to the Supreme Court of the United States in accordance with the rules and practice for such cases made and provided, to the end that the said appeal may be heard and determined by the said Supreme Court of the United States.

(S'd)

S. BONET.

WILHELMUS MYNDERSE AND  
 G. BOWNE PATTERSON,  
*Proctors for Claimant.*

Upon reading and filing the foregoing notice and prayer of appeal and the assignment of errors and bond upon appeal, the appeal of the claimant, Sebastian Bonet, is hereby allowed.

Key West, May 28th, 1898.

(S'd)

JAMES W. LOCKE,  
*District Judge of the United States for the  
 Southern District of Florida.*

24

Endorsed: Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Bond.*)

United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA, }  
*against*  
 THE STEAMER PEDRO & HER CARGO. }

Know all men by these presents that we, Sebastian Bonet, principal, and the American Surety Company, surety, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States of America; for which payment, well and truly to be made, we bind ourselves, our heirs,



executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of May, 1898.

Whereas lately, at a session of this court, in a cause of prize pending therein, wherein the United States is libellant against The Steamship Pedro and her cargo, and the said Sebastian Bonet is claimant of the steamship, a final decree was rendered in favor of said libellant, and the said claimant having filing (sic) his appeal papers and having obtained an order granting his appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said Sebastian Bonet shall prosecute his said appeal to effect  
25 and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

(S'd)

S. BONET.

[SEAL.]

(S'd)

THE AMERICAN SURETY COMPANY OF NEW YORK,

By GEO. W. ALLEN, Att'y-in-fact.

Taken and acknowledged before me May 28th, 1898.

(S'd)

JULIUS OTTO,  
U. S. Comm'r.

(Endorsed:) The within bond is hereby approved. (S'd) James W. Locke, judge. Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(Request of the U. S. Dist. Att'y for Appraisal of the Steamer Pedro and Copy of Letter from the Attorney General.)

In the District Court of the United States, Southern District of Florida.

To the Hon. James W. Locke, judge:

J. N. Stripling, attorney of the U. S. for the district aforesaid, respectfully represents that the steamship Pedro was, on the 27th day of May, A. D. 1898, adjudged a legal prize of war, and as such was condemned to be sold according to law; that the United States desires to appropriate said ship to their use: therefore by virtue of the authority conferred by the Hon. the Attorney General by letter under date of the 17th day of May, A. D. 1898, a copy of which is hereto attached, he respectfully requests that said ship may be appraised in accordance with the provisions of sec. # 4624 of  
26 the Revised Statutes.

Key West, Fla., May 30th, 1898.

(S'd)

J. N. STRIPLING, U. S. Att'y.

(Endorsed:) Filed May 31st, 1898. (S'd) E. O. Locke, clerk.

(*Letter of Att'y General.*)

H. M. H.

Copy.

W. R. L.

6787-1898.

DEPARTMENT OF JUSTICE,  
WASHINGTON, D. C., *May 17th*, 1898.

In correspondence on this subject quote the above initials & file number.

J. N. Stripling, Esqr., United States attorney, Jacksonville, Fla.

SIR: You are hereby directed, in case the Spanish steamer "Pedro" should be condemned as a prize of war, to take the necessary steps under sections 4624, Revised Statutes, to effect the early delivery of the "Pedro" to the naval authorities for use by the Navy as a collier, store, or ammunition ship.

The Secretary of the Navy will make the deposit required by the last clause of section 4624 when advised of the amount thereof by you through me, and you are hereby directed to inform me at the proper time what amount of deposit will be required.

Very respectfully,

JOHN W. GRIGGS,  
*Attorney General.*

27

(Endorsed :) Filed May 31st, 1898. (S'd) E. O. Locke, clerk.

(*Letter of Judge Locke to Commodore Remey.*)

United States Courts, Southern District of Florida.

KEY WEST, FLA., *May 30th*, 1898.

SIR: I have been requested by the Hon. Attorney General to order an appraisement of the prize S. S. Pedro in order that she may be taken by the U. S. Navy.

I know of no civilian at this port who is sufficiently well informed of that class of property, and would be glad to receive any suggestion as to any naval officer not interested in the capture of said prize who might be competent to determine such value.

If you will kindly give me the names of two or three such officers I will be glad to appoint them.

Very respectfully,  
(S'd)

JAMES W. LOCKE, *Judge.*

To Commodore Geo. C. Remey, U. S. Navy, commanding, Key West, Fla.

(Endorsed.)

28

NAVAL BASE, KEY WEST,  
U. S. F. S. FERN, *May 30th*, 1898.

Respectfully returned to Judge J. W. Locke, with the suggestion that Commander C. C. Todd, U. S. S. Wilmington; Chief Engineer

F. H. Eldridge, U. S. S. Hel-na, and Act'g Lieut. J. A. Pattson, prize str. Restormel, be appointed as appraisers.

(S'd)

GEO. C. REMEY,  
*Commodore Com'd'g.*

Filed May 31st, 1898.

(S'd)

E. O. LOCKE, *Clerk.*

*Order Appointing Appraisers.*

In the District Court of the United States, Southern District of Florida. In Admiralty.

UNITED STATES }  
vs. } Prize.  
S. S. PEDRO. }

It is hereby ordered that Commander C. C. Todd, U. S. N.; Chief Eng'r F. H. Eldridge, U. S. N., and Lt. J. A. Pattson, U. S. N., be and are hereby appointed appraisers to appraise the value of the prize S. S. Pedro and make due report of such appraisement in writing to this court upon completion.

Key West, Fla., May 30th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

29 (Endorsed:) Filed May 31st, 1898. (S'd) E. O. Locke, clerk.

*(Oath of Appraisers.)*

District Court of the United States, Southern District of Florida.  
In Admiralty.

UNITED STATES }  
vs. } Prize.  
S. S. PEDRO. }

We, the undersigned, having been appointed as appraisers to appraise the value of the prize S. S. Pedro, do solemnly swear that we will appraise the said S. S. Pedro to the best of our ability and without partiality.

(S'd)

C. C. TODD,  
*Com'd'r, U. S. N.*

(S'd)

F. H. ELDRIDGE,  
*Chief Eng'r, U. S. N.*

(S'd)

J. A. PATTSON,  
*Acting Lieut., U. S. N.*

Sworn to before me this May 31st, 1898.

(S'd)

JAMES W. LOCKE.

(Endorsed:) Filed May 31st, 1898. (S'd) E. O. Locke, clerk.

*(Appraisers' Report.)*

United States District Court, Southern District of Florida.

THE UNITED STATES  
*vs.*  
 THE S. S. PEDRO & CARGO. }

30 The undersigned having been appointed to appraise the steamer Pedro, now at Key West, do report that on the 31st day of May, 1898, they appraised said steamer Pedro and find said vessel to be worth in her present condition the sum of two hundred thousand (\$200,000.00) dollars, which is respectfully submitted.

Key West, Fla., May 31st, 1898.

(S'd)

C. C. TODD,

*Com'd'r, U. S. N.,*

(S'd)

F. H. ELDRIDGE,

*Chief Eng'r, U. S. N.,*

(S'd)

J. A. PATTSOON,

*Act. Lieut., U. S. N., Appraisers.*

Endorsed: Filed May 31st, 1898. (S'd) E. O. Locke, clerk.

*(Order to Deliver Vessel.)*

In the District Court of the United States, Southern District of Florida.

UNITED STATES  
*against*  
 THE STEAMER PEDRO. } Prize.

It appearing that application from the Navy Department for the delivery of said steamship Pedro for the use of the navy has been made and due appraisement thereof had by a board of appraisers, who have reported the value of said vessel to be two hundred thousand (\$200,000) dollars—

It is hereby ordered that the marshal surrender and deliver the said vessel to the representatives of the Navy Department at this

place as soon as her cargo may be landed therefrom, and  
 31 that the Honorable Secretary of the Navy deposit with the assistant treasurer at New York the said sum of two hundred thousand (\$200,000) dollars to the credit of the United States district court for the southern district of Florida.

Key West, Fla., June 1st, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

Endorsed: Filed June 1st, 1898. (S'd) E. O. Locke, clerk.

*(Order to Sell Cargo.)*

District Court of the United States, Southern District of Florida.

THE UNITED STATES  
*vs.*  
 THE S. S. PEDRO & CARGO. }

In the matter of the claim of Goë. Heise, of Hamburg, for 2,500 bags of rice, and of Edward Twigge, of Liverpool, England, for 1,000 bags of rice, all of the cargo of the said steamship Pedro.

It appearing that the evidence to prove property in the claimants at the time of capture is insufficient, and that further time has been given for further proof, and it further appearing that said rice is liable to deterioration and injury on account of the heat of the climate, awaiting further proof, it is ordered that the marshal proceed to advertise and sell said rice as perishable and cause the proceeds to be deposited to await final action on said claim.

June 6th, 1898.

32 (S'd)

JAMES W. LOCKE, *Judge.*

Endorsed: Filed June 6th, 1898. (S'd) E. O. Locke, clerk.

*(Order Extending Time to File Record.)*

In the United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA  
*vs.*  
 THE STEAMER PEDRO AND HER CARGO. }

An appeal having been allowed by the court herein from the final decree in the above-entitled cause condemning the above-named steamer and her cargo—

Now, upon the underwritten consent of the United States attorney for the southern district of Florida and the motion of Wilhelmus Mynderse, proctor for the claimants of said steamship and her cargo, it is hereby ordered that the time of the claimants and each of them to file the record on appeal be and hereby is extended to thirty days from June 25th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

I hereby consent to the entry of the foregoing order.

(S'd)

J. N. STRIPLING,  
*U. S. Attorney.*

Endorsed: Filed June 24th, 1898. (S'd) E. O. Locke, clerk.

33 (Claim of Compagnie Francaise des Cables Telegraphiques.)

United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA  
*against*  
 THE SPANISH STEAMER PEDRO AND HER CARGO.

UNITED STATES OF AMERICA, } 83 :  
Southern District of Florida,

And now, to wit, this 20th day of June, 1898, comes La Compagnie Francaise des Cables Telegraphiques, by Louis A. Lurienne, its general manager in the United States, and says that the said Compagnie Francaise des Cables Telegraphiques is a corporation organized and existing under the laws of the Republic of France, and is the owner and operates a line of cable and telegraphic communication between France and the United States, and also between France, the United States, and several of the West India islands, including the island of Cuba; that the said Compagnie Francaise des Cables Telegraphiques owns and has on board the above-mentioned steamship, Pedro, the following-described property, intended as a part of the said company's materials and equipments for its cable lines extending into the island of Cuba; that the said Compagnie Francaise des Cables Telegraphiques is the sole owner of the said merchandise, and that no other person, firm, or corporation has any interest therein, viz:

1.	One box printed matter.....	Mt.	10.7	187
2.	“ “ “ “ .....	“	10.1	160
511.	“ “ writing paper, pens, & pencils.....	“	10.	120
	510. One box ink.....	“	4.1	37
34	17. One box filters.....	Mt.	7.2	40
	6044. “ “ paper.....	“	9.2	119
6045.	One box .....	“	9.2	117
6027.	Telegraphic (apparatus or material) .....	“	12.10	124
3030.	One bbl. Lacombe elements.....	“	8.2	64
5030.	“ box linemen's apparatus & tool .....	“	4.6	71
545.	“ “ printing matter, writing paper, pens pens and ink .....	“	9.4	

That the said property was originally shipped from the port of Havre, France, wherethesame was purchased by and for the account of this claimant for Santiago, Cuba, under bills of lading which are hereto annexed; that the same is the lawful property of the said Compagnie Francaise des Cables Telagraphiques and no other person or persons, corporate or otherwise, whatsoever, and that the said company claims delivery thereof to it or its general manager above stated.

Wherefore the claimant prays that the said property may be adjudged to belong to this claimant, and that the same may be de

livered to it or its general manager, and that justice may otherwise be done in this behalf.

(S'd)

LA COMPAGNIE FRANCAISE DES  
CABLES TELEGRAPHIQUES,  
By LOUIS A. LURINNE,  
*Manager, #44 Broad St., New York City.*

Sworn to before me this 20th day of June, 1898.

(S'd)

FREDRICK KOFF,  
*Notary Public, N. Y. Co.*

[SEAL.]

(*Order of Court.*)

This claim coming on to be heard upon the test affidavit, and it appearing that the within-named property is neutral property and not subject of condemnation, it is ordered that the same be reserved from sale by the marshal and delivered to the order of the claimant upon the payment of the expenses which have been incurred in the care, custody, storage, &c.

35 Jacksonville, Fla., June 24th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

(Endorsed:) Filed June 27th, 1898. (S'd) E. O. Locke, clerk.

(*Appraiser's Oath.*)

District Court of the United States, Southern District of Florida.  
In Admiralty.

UNITED STATES	} Prize.
vs.	
S. S. PEDRO & CARGO.	

We, Peter A. Williams, Charles Goodwin, and James G. Jones, who have been appointed appraisers of this court to appraise the pontoon in the cargo of the Spanish S. S. Pedro, do solemnly swear that we will appraise the said pontoon at its true value, to the best of our ability and without favor or partiality, so help me God.

(S'd)

PETER A. WILLIAMS.

(S'd)

CHAS. GOODWIN.

(S'd)

JAMES G. JONES.

Sworn to and subscribed before me this June 28th, 1898.

(S'd)

J. OTTO,  
*D'y Clerk, U. S. Dist. Court.*

Endorsed: Filed June 28th, 1898. (S'd) E. O. Locke, clerk.

36

(*Appraiser's Report.*)

U. S. District Court, So. Dist. of Fla.

The undersigned having been appointed to appraise the three pontoons on board of the S. S. Pedro, now at Key West, do report





Ordered that the clerk of this court transmit to the Supreme Court of the United States the original documents produced in this case by the prize master and prize commissioners and submitted in evidence in the hearing herein for inspection, if desired, in said Supreme Court upon the hearing of the appeal herein; that the same be securely sealed and a schedule thereof made and attached thereto, and a copy of said schedule be retained by the clerk; said papers,

after inspection and disposition of this case by the said appellate court, to be returned to the files of this court.

July 19th, 1898.

(S'd)

JAMES W. LOCKE, *Judge*.

Endorsed: Filed July 21st, 1898. (S'd) E. O. Locke, clerk.

40

*Opinion.*

THE UNITED STATES

vs.

THE SPANISH STEAMSHIPS "BUENA VENTURA," "PANAMA,"  
"Catalina," "Miguel Jover," "Pedro," and "Guido," } Prize.  
and Cargoes.

The questions involved in these several cases, being of the same character, have been considered together.

Of these vessels, the "Buena Ventura" cleared from the port of Scranton, Miss., on the 16th of April, 1898, and sailed with a cargo of lumber for Rotterdam the 19th of that month, and was captured in the straits of Florida between Key West and Cuba on the 22nd, by the U. S. S. S. "Nashville;" the "Panama" cleared and sailed from New York for Havana with an assorted cargo on the 20th of the same month, and was captured on the 25th by the U. S. S. S. "Mangrove" while approaching that port; the "Catalina" and the "Miguel Jover," laden with cotton and staves, cleared from New Orleans on the 21st of the same month and sailed the evening of the same day for Barcelona and Genoa; the "Catalina" was captured by the U. S. S. S. "Detroit" and the "Miguel Jover" by the U. S. S. S. "Helena," both on the 24th; the "Pedro," which had sailed from Antwerp some time before, had been into Havana, had cleared for Santiago, Cuba, and was captured on the 22nd of the same month, about twelve miles from the port of Havana, by the U. S. S. S. "New York," and the "Guido" from Liverpool, bound for Havana by the way of Santander, Cuwana, and La Puebla, was captured on the 27th by the U. S. S. S. "Terror."

They are all Spanish vessels, sailing under the Spanish flag with royal patents, officered and manned by Spaniards, and, with the exception of the Pedro and the Guido, no question has been raised as to their being enemy's property.

They were all merchant vessels engaged in regular lines of commerce, and this and the hardship and injustice of the captures before a declaration of war has been strenuously urged in argument as contrary to the humane policy of our Government, in addition to the provisions of the President's proclamation.

The principles of law of prize have been so often and so distinctly declared by the highest courts of all civilized countries that they need no extended review here. The law of prize is a law of war, of might, and of force, which is to be exercised at the order and behest of the Executive and not upon the principles of policy or equity, and while prize courts, where questions of doubt arise, yield as far

as possible to the claims of humanity and respect for personal rights, yet they cannot be controlled by such considerations.

The former rule of the law of prize was that the bel-igerent had a right to capture the property of the opposing bel-igerent or antagonist, under any circumstances, and to injure him in any way by depriving him of his property.

That was the original practice, but it has been restricted by the gradual advance of civilization until by the prize law of today, as accepted, the captor has the right, in the absence of any declaration or exemption by the political power, to capture, wherever and whenever found afloat, anything which belongs to or is the property of the enemy.

Whenever it is claimed that there is an exemption made by proclamation or by ordinance, the burden of proof is upon the claimant to show that the particular case comes within the exemption, and although such proclamation or ordinance is to be liberally construed in behalf of the claimants, there must be found therein sufficient language to justify the court in finding that the intention was to exempt from seizure the class of property under investigation. The language to justify an exemption must be found; it cannot be presumed from international history or policy, nor from the principles of justice, generosity, or humanity. The important questions in the cases now pending arise upon the construction of the proclamation of the President of the United States of April 26th, 1898.

As it is construed by the claimants of these several steamships, each one of them comes within some provision of this proclamation, which exempts it from the liability of capture and condemnation, but as construed by the attorneys for the captors, not one of them is exempt.

The proclamation is as follows:

"By the President of the United States of America:

*" A Proclamation.*

"Whereas, by an act of Congress, approved April 25th, 1898, it is declared that war exists and that war has existed since the 21st of April, 1898, including said day, between the United States of America and the Kingdom of Spain; and

"Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris;

"Now, therefore, I William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

43 "1. The neutral flag covers enemy's goods, with the exception of contraband of war.

"2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

"3. Blockades in order to be binding must be effective.

"4. Spanish merchant vessels in any ports or places within the United States, shall be allowed until May 21st, 1898, inclusive for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, upon examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein continued shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

"5. Any Spanish merchant vessel which prior to April 21st, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

"6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with, except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

"In witness whereof, I have hereunto set my hand and  
44 caused the seal of the United States to be affixed.

"Done at the city of Washington on the 26th, day of  
[SEAL.] April in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

WM. MCKINLEY.

"By the President:

"ALVEY A. ADEE,

"*Acting Secretary of State.*"

Examining this proclamation in its several parts, we find, first, the simple declaration and announcement of a recognition of a condition of war since the 21st of April, 1898, as declared by the act of Congress of April 25th, 1898; second, a declaration of the desire that such war shall be conducted upon principles in harmony with the present views of nations and sanctioned by recent practice.

This being the declared intention of the Executive, it must be accepted to aid in construing the subsequent declarations of the proclamation.

The first point in which the Executive desires to continue the practice and be in harmony with the views of nations is that there shall be no privateering; the second, that a neutral flag shall cover the enemy's goods, with the exception of contraband of war, and that neutral goods not contraband of war shall not be liable to forfeiture under the enemy's flag. So far it is very clear that the proclamation has followed the humane practice of all nations more

recently established; but reaching the fourth article of the proclamation, we find it absolutely necessary in these cases, in order to interpret and construe it according to the arguments of either

45 the libellants or the defendants, to read into it some language determining the time at which Spanish merchant vessels should be "in any port or places within the United States" to give them the right of being allowed until May 21st, 1898, for loading their cargoes and departing. There is no expression of any element of time in this connection to aid in the construction, but upon this depends the cases of the "Catalina" and of the "Miguel Jover," which cleared from New Orleans the evening of April 21, 1898.

It is urged by the claimants that the intention of the proclamation was that the exemption should attach to all Spanish merchant vessels in harbor at the outbreak of the war, and that the words "at that date," or their equivalent, should be understood, while the counsel for the captors contends that there can be no retroactive effect of the proclamation, and the only word that could be understood is "now."

Which of these views is in harmony with the present view of nations and sanctioned by their recent practice?

Formerly at the outbreak of war nations lost no time in seizing enemy's shipping found in their ports, although they had entered in good faith in time of peace; but modern usage condemns such a breach of national good faith, and recent practice has been to give certain days of grace to shipping found within enemies' ports at the outbreak of war. In the Crimean war, in 1854, Russian vessels were allowed six weeks to leave British ports; in 1870, thirty days were allowed German vessels in French ports, and French vessels in German ports were allowed six weeks to leave. In 1897 (the Greeco-Turkish war), fifteen days were allowed by each nation for the vessels of the opposite nation to clear with impunity. In each of these cases the immunity attached from the outbreak of the war.

46 Was it the intention of this proclamation to apply these days of grace to all vessels in ports of the United States at the outbreak of the war, or to those so in port on the day of the actual issuance of the proclamation? If the latter construction is accepted, it certainly would not be in accordance with the present views of nations nor sanctioned by their recent acts. It would leave a space of five days after the commencement of hostilities when, according to such views and practice, they might be considered exempt from seizure and could safely leave port, but upon issuing of such proclamation became subject to seizure. If they were safe according to the present rule of civilized nations, certainly the issuing of the proclamation at a later day, without declaring that it should be retrospective, should not make them liable.

In the proclamation of the 22nd of April the President had declared that thirty days' grace should be given to neutral vessels found in blockaded ports. Can it be believed that he intended to change the number of days of grace from thirty, already named in one proclamation, to twenty-five in this? If not, why is the 21st of May named? Is it not more reasonable to consider that the same



number of days was intended; which, commencing at the outbreak of the war, would bring it to the 21st of May, the day named?

While it is true that the rule of construction generally is that statutes have no retrospective or retroactive effect, it is not without exceptions, and the principal question always is, what was the intention of the legislators?

It is contended that, the vessels being captured before the proclamation issued, the rights of the captors attached; but if it was the intention to exempt all in port at the outbreak of the war it is not considered that the attaching of any such right should  
47 influence the decision in these cases. Giving the introductory language of the proclamation the force to which I consider it is entitled, I feel compelled to hold that the intention of the Executive was to fully recognized the recent practice of civilized nations and not to sanction or permit the seizure of the vessels of the enemy within the harbors of the United States at the time of the commencement of war or to permit them to escape from ports to be seized immediately on entering upon the high seas, and that the fourth article should be held to apply to all Spanish merchant vessels in the harbor of the United States upon April 21st, 1898, and exempt them from seizure. This will effect the release of the "Catalina" and the "Miguel Jover."

In regard to the cargoes of such vessels it is not to be considered that it should be the intention of the Executive or the policy of any nation to permit vessels to take in their cargoes up to a certain time and leave the port free and then have them seized, so that the cargoes should be liable to condemnation. What makes the free vessels makes the free cargoes, although it may be found to belong to the enemy.

The fifth article of this proclamation declares that any Spanish merchant vessel which prior to May 21st, 1898, shall have sailed from any foreign port bound to any port or place in the United States shall be permitted to enter such port and discharge her cargo and afterwards to depart without molestation. This raises a question which is not without difficulty in the cases against the "Pedro" and the "Guido."

The testimony shows that both these vessels were owned by a Spanish corporation of Bilbao, Spain, and were engaged in regular trade, with outward cargoes from European—particularly  
48 Spanish—ports to Cuban ports to discharge, thence to some part of the United States, usually Pensacola, for a load of lumber for the return voyage. The "Guido" had sailed from Liverpool by way of Santander, Coruna, and La Pueblo, and was bound for Havana. In her regular course, after she had touched at that and several of the Cuban ports, she would have proceeded to Pensacola, and she had among her papers a bill of health for that place, but there was no charter-party or certainty of her going there. She had no cargo for that or any other port of the United States.

The "Pedro," a vessel of the same line, had sailed from Antwerp with cargo destined for several Cuban ports; she had been into



Havana, discharged some cargo and taken other on board, and was bound to Santiago. After she had touched there and one or two other Cuban ports for which she had cargo, she was under charter to proceed to Pensacola to load for lumber for some port in Europe. She had on board no cargo for Pensacola.

It is further contended by the claimants of these two vessels that the fact that their ultimate destination, after stopping at other ports, was a port of the United States to take in cargo, brings them within the provisions of the fifth article of the proclamation as being vessels which prior to April 21st, 1898, had sailed from a foreign port bound for a port or place of the United States, and extended and elaborate arguments were had and cases were cited upon the subject of continuing voyages and their termini. I do not consider that such a construction can be recognized as reasonable when applied to the circumstances of this case, nor that it can for a moment be considered to have been the intention of the proclamation when made.

The reason- for such exemption from seizure are twofold:  
49 First, it excuses a vessel which, ignorant of the condition of war, comes directly within the power of the enemy, and is therefore to that extent a protection to commerce and tends to prevent a breaking up of commercial relations between nations upon the first, and perhaps unfounded, suspicion of unfriendly relations between them; secondly, as the material increase of a nation's possession is always desirable upon the outbreak of war, and the importations of foreign cargoes may well be considered to tend toward such increase, it is desirable to encourage this importation, although brought by ships of the enemy.

But neither of the reasons apply to the cases at bar. These vessels would have been informed of the condition of war long before approaching our shores. In fact, a state of war existed before the "Pedro" left Havana, and having no cargo to bring to this country, they were only coming to take property away and in the meantime carrying on commerce in the interest of the enemy between its ports and supplying it with necessary provisions with impunity.

It is also urged by the claimants of these vessels that although they were owned by a Spanish corporation of Bilbao, La Flecha, the general managers of which were Spanish citizens and resided at Barcelona, a large portion of the stock of this corporation was owned by subjects of Great Britain, who had a lien or equitable ownership of the rest of the stock, so that in reality the vessels were neutral property and had only been put under the Spanish flag to take advantage of certain privileges given them in trading to the Spanish West Indies.

It has been repeatedly declared that the property of a house of trade established in an enemy's country is liable to condemnation as prize whatever may be the domicile of the partners, and this principle will apply with much greater force to the property of a corporation duly incorporated and acting under the laws of an enemy's country, regardless of the domicile of the individual stockholders or any equitable interest neutrals might have

in the stock. A mortgage or equitable lien upon the vessel itself, if held by a neutral, could not protect her from seizure, and much less can an equitable interest in the stock of a corporation which is the owner. These vessels were owned by a Spanish corporation, sailing under a royal Spanish patent, flying the Spanish flag, officered and manned by Spanish citizens, nearly if not quite all of whom were registered as members of the Spanish naval reserve, and they must be taken and considered as in all respect- property of enemy and subject to forfeiture.

The "Panama" sailed from New York before the 21st of April, 1898, and was upon the high seas at that time and at the time of capture. The fact that there had been no formal proclamation or declaration of war before she had sailed or at the time she was captured, or that she had at a recent date left a port of the United States, cannot be considered as exempting her from the liability of all enemy's property to capture unless coming directly within the language of the President's proclamation.

The practice of a formal proclamation before recognizing an existing war and capturing enemy's property has fallen into disuse in modern times, and actual hostilities may determine the date of the commencement of war, although no proclamation may have issued, no declaration made, or no action of the legislative department of the Government had. This date has been declared by the act

51 of Congress of April 25th, 1898, and by the proclamation of the President of the next day, to have been April 21st, 1898, including that day, so that any Spanish property afloat captured from that time became liable to condemnation, unless exempt by the executive proclamation.

In the case of the "Buena Ventura" it is shown by the evidence that she cleared from Scranton, Miss., with permission to touch at Newport News for coal on her voyage to Rotterdam. Although she was to touch there for that purpose, it was not a port of discharge, nor was she from a foreign port, and her case clearly does not come within the language of the proclamation. Had she been captured approaching Newport News for the purpose of coaling, even then there might have been some opportunity for argument that the permission to touch had given her encouragement, and it should in justice furnish the same protection as to a vessel coming from a foreign port, but that was not the case. When captured, she must have been pursuing the same course she would have pursued had there been no intention to stop for coal, and neither such intention nor permission tended in any way to increase the liability of her capture; she was an enemy's vessel, found upon the high seas at the commencement of the war and not coming within the exceptions of the proclamation.

Her cargo was shipped by a citizen of the United States to a neutral port, consigned partly to the shipper's order and partly to a citizen of Great Britain, and is unquestionably either neutral or the shipper's property. The suggestion that it should be condemned, although neutral, because found in an enemy's vessel and at the time of the capture there had been no proclamation issued declar-

ing it not subject to condemnation cannot be entertained for a moment. The policy and law declared in the executive proclamation is considered to be the law by which this court is governed, whether the capture took place before or after the proclamation was issued. It is the existing law by which rights must be determined, and in this matter there can be no possible question of construction or intention.

The cargoes of the "Pedro" and the "Guido" appear from the testimony and the papers found on board to have been mostly shipped by neutrals to parties in the enemy's country. Such shipments are *prima facie* enemy's property and subject to condemnation, but such presumption can be overcome by evidence, and in those cases in which claims and test affidavits have been filed tending to show the ownership time will be given for further proof; but the property all being either perishable or subject to deterioration by delay, or such that the cost of keeping will be disproportionate to its value, an order of sale will issue and the claim stand against the proceeds of sale.

The "Panama," after touching at Havana, was bound for Vera Cruz, and a large portion of her cargo is shown to have been shipped to Mexico and consigned to residents, and, presumptively, citizens of that Republic. That is all *prima facie* neutral property and will be released. The rest, shipped by merchants in New York and consigned to parties in Havana, is presumably the property of the consignees, but, where claims and test affidavits have been filed combating that presumption, time for further proof will be given, as in the cases of the "Pedro" and the "Guido." When the property can be immediately restored to the claimants, it will be so ordered, but otherwise it will be sold, pending further proof, as the greater part, if not all, is liable to deterioration by the delay.

Opinion filed July 13, 1898.

E. O. LOCKE, *Clerk*.

53 Standing interrogatories established by the district court of the United States for the southern district of Florida, to be administered in prize causes in said court, to all persons who may be produced as witnesses to be examined *in preparatorio*.

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude or part, and when, was the said ship and goods concerning which you are now examined,

taken and seized? Upon what pretence, and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made, at the time when the said ship was taken? and if yea, how many guns were fired? and by whom? and by what ship or ships were you taken? Was the ship or vessel by which you were captured, a ship of war, or a vessel acting without any commission, as you believe? Were any other and what ship- in sight, at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you, or any of the officers or mariners belonging to the ship or vessel, concerning which you are now examined, any, and what part, share or interest in the said vessel or her lading? If yea, set forth who and what goods or interest you or they have? Did you belong to the said vessel, at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board, and from whom? To what ports and places did she sail, during her said voyage, before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail, previously to the capture? Set forth all the ports to which she has sailed, and at which she has touched and traded, during her whole voyage, out and home.

8th interrogate. What lading did the said vessel carry, at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board, at the time she was taken? When was the same put on board? Set forth the different species of lading, and the quantity of each sort. Has any part of the cargo of said vessel been unladen, since the commencement of her

original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel, at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession? and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel? and if any such were made in what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you last see it, and what has come of it?

11th interrogate. Was the said lading put on board at one port and at one time or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners, or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk or benefit? Have any one of the said consignees or shippers, any and what interest in the said goods? If yea, whereon do you found your belief, that they have such interest? Do you verily believe, that at the *at the* time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons and to none others?

54 13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed, which were different in any respect from those which were on board the ship, at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters or instruments relative to the ship and goods, concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter-party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom, was such charter-party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters or other

writings, were on board the ship, at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed, or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17 interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned.

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship, or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel or ship, to another? From what, and to what shore, quay, boat, barque, vessel or ship, and when and where, was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers or documents, relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession or power, do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture, of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?



26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted, at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession or occupation? Had they any commission? for what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers or mariners secreted on board and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were, and are, all the passports, sea briefs, charter-parties, bills of sale, invoices and papers, which were found on board, entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to, or on behalf of the person or person- who appear to have been sworn, or to have affirmed thereto, without their ever having, in fact, make any such oath or affirmation? How long — time were they to last? Was any duty or fee payable, and paid, for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? and if not, where was the ship at the time? Had any person on board any let-pass, or letters of safe conduct? If yea, from whom and for what business? Had the said ship any

55 license or passport from any foreign power or authority during the voyage? If so, state from whom — been obtained, and for what purpose and use.

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo, other than those found on board and delivered to her captors? If yea, what was their purport, to whom were they written and sent, and what is become of them?

29th interrogate. Towards what port or place was the ship steering her course, at the time of her being first pursued and taken? Was her course altered, upon the appearance of the vessel by which she was taken? Was her course, at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship, before, or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered, at any, and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid, or to be paid,



a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know, or believe, in your conscience, such sale or transfer has been truly made and not for the purposes of covering or concealing the real property? Do you verily believe, that if the ship should be restored, she will belong to the persons now asserted to be the owners and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where — they put on board? and by whom, or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole — which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo, concerning which you are now examined at the time of the capture?

56 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA }  
vs. } Prize.  
THE SPANISH STEAMER "PEDRO." }

Deposition of Sebastian Bonet, a witness produced, sworn, and examined in *preparatorio* on the 6th day of May, A. D. 1898, at the U. S. court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination, in behalf of the captors of a certain ship or vessel called the Pedro.

1. To the first interrogatory deponent answers:

My name is Sebastian Bonet. I was born in Palma Mayorca, Baleric islands. I have resided during the last seven years on board the steamer Pedro. I am a subject of Spain. I am a married man. My wife resides in Santander.

2. To the second interrogatory deponent answers:

I was present at the time of the seizure of the Pedro. The ship had a royal patent issued by the Spanish government.

3. To the third interrogatory deponent answers:

The ship was captured twelve miles, more or less, from Havana; I do not know the latitude or longitude. The vessel was captured on the 22nd day of April, 1898, at 6.10 p. m. The said vessel was captured upon the ground that war existed between Spain and the United States. The said vessel was carried into the port of

57 Key West under the Spanish flag. We had the English flag on board. I found it there when she was bought from the English people who formerly owned the vessel. My ship made no resistance at the time of the capture. I did not know the name of the ship which captured my vessel, but I was told by the boarding

officer that it was the New York, American man-of-war. There were several ships in sight at the time of my capture. I counted fourteen ships at the time, among them including tugs and yachts. I did not know the names.

4th. To the 4th interrogatory deponent answers:

The name of the master of the ship captured is Sebastian Bonet. I am the person who is master. I was appointed master of said ship by Don Jose Serra y Font, who is general manager for the owner of said vessel, about nine years ago. I received possession of said vessel from G. H. Fletcher & Co., general agents of the owners at Liverpool, England.

5. To the fifth interrogatory deponent answers:

Her registered tonnage per Spanish, 1,618.80 registered tons. There were on board 35 men, including the captain. They are all Spanish subjects. I shipped them at different ports at different times, but the majority of them were shipped at Santander.

6. To the sixth interrogatory deponent answers:

The captain and none of the officers had any interest in the vessel and cargo. I have known the said vessel about nine years. I first saw her in Rotterdam nine years ago. She was built at New Castle.

58 7. To the 7th interrogatory deponent answers:

The vessel's name is Pedro; she has been called the Pedro about nine years. She was called at a time the Lilbon Tower. I am not sure of the name; something like that. The last voyage of the vessel began at Antwerp and ended at Pensacola, where we were to take on board a cargo of lumber. The last port that I cleared from was Havana, Cuba.

8. To the eight interrogatory deponent answers:

The cargo carried by the vessel at the commencement of her last voyage out of Antwerp was mostly rice and about 100 tons of general cargo. At the time she was captured the vessel was loaded with part of the aforesaid cargo; the other portion had been unloaded at Havana. The said cargo had been laden at the commencement of the voyage at Antwerp. I do not know the articles then on board, but the manifest which was turned over to the boarding officer will show what was on board.

9. To the ninth interrogatory deponent answers:

The owners of the vessel at the time of her seizure was La Compania La Fletcher. I do not know who the owners are now, but Don Jose Serra y Font is general director of this company. I know that they are the owners by the royal patent and document of the ship which were turned over to the capturing officer. I do not know the country to which the owners of said vessel belong. I do not know where they or their families live. I do not know who they are subjects of. I do not know the names of the persons who compose the company which owns the vessel, which is the reason I cannot give you their places of residence or anything about them.

59 The home office of the La Fletcher Company is at Bilbao, Spain. The company has been in possession of the vessel about nine years. I do not know from whom they purchased the said vessel.

10. To the tenth interrogatory deponent answers :

Witness says that he knows nothing about the matters and things therein interrogated.

11. To the 11th interrogatory deponent answers :

The part of the cargo was put on board at Antwerp at one time and another part at Havana.

12. To the 12th interrogatory deponent answers :

I cannot tell you the names of the respective owners and consignees of the cargo of said vessel. The manifest will show it. I do not know — what country the owners or consignees of said vessel belong. The manifest and bills of lading will show where the consignees reside and do business. The goods were to be delivered to the places mentioned in the manifest, and I believe they were for the benefit of the persons mentioned in the manifest.

13. To the 13th interrogatory deponent answers :

The bills of lading are given by the agents, and sometimes a copy is given to the ship and sometimes they are mailed direct to the consignees at the port of destination.

14. To the 14th interrogatory deponent answers :

There are no bills of lading, as far as I know, in the United States in relation to the cargo of said ship.

15. To the 15th interrogatory deponent answers :

60 The vessel was not under a charter-party for the cargo which was captured, but the vessel was under charter to go to Pensacola for a load of lumber at the time of sailing.

16. To the 16th interrogatory deponent answers :

All papers on board the ship at the time of her capture *was* delivered to the prize master. None of them were burnt, torn, destroyed, or thrown overboard.

17. To the 17th interrogatory deponent answers :

This ship has never before been seized and condemned as a prize.

18. To the 18th interrogatory deponent answers :

I do not know if my wages will be paid to me during the term of my capture. If they are not, that will be the extent of my loss. I have received no indemnity or promise of indemnity or satisfaction for any part of damage which I have sustained or may sustain by this capture.

19. To the 19th interrogatory deponent answers :

I do not know whether or not the said ship or cargo or any part of the same is insured.

20. To the 20th interrogatory deponent answers :

I suppose that if I had delivered the goods to the consignee that they would have belonged to them.

21. To the 21st interrogatory deponent answers :

I do not know where the cargo was grown, produced, or manufactured.

22. To the 22nd interrogatory deponent answers :

61 All the cargo brought on board the ship from Antwerp was taken from the dock ; that from Havana was taken on board by lighters.

23. To the 23rd interrogatory deponent answers:

I do not know anything about any bills of lading being in the United States or elsewhere, except as before stated.

24. To the 24th interrogatory deponent answers:

The ship's papers were taken by the prize master, and I suppose that they are now with the prize commissioners.

25. To the 25th interrogatory deponent answers:

I delivered part of my cargo at Havana as per orders.

26. To the 26th interrogatory deponent answers:

There were no passengers on board the ship at her time of capture. There were no officers, soldiers, marines, or citizens of the United States on board the vessel at the time of her capture.

27. To the 27th interrogatory deponent answers:

All the papers and documents found on board my vessel were true and correct. All the papers of the ship at the time of her capture were obtained solely for the vessel. The royal patent has never been renewed. At the time the royal patent was granted the said vessel was in a Spanish port. The said ship had no passport or other foreign papers during her voyage.

28. To the 28th interrogatory deponent answers:

I have written a letter to Messrs. Fletcher & Co. at Liverpool and Don Jose Serra y Font, informing them that I had been  
62 captured and was at Key West.

29. To the 29th interrogatory deponent answers:

She was pursuing her course towards Santiago, Cuba, when we were captured. Her course was not altered at the appearance of the vessel which captured us. The course was all time, weather permitting, directed toward the port of destination, as shown by the ship's papers. She was not before or after sailing wide of our port of destination. I do not know the exact distance to our port of destination. Her course was altered after the capture to Key West port.

30. To the 30th interrogatory deponent answers:

The witness says that in my previous answers I have stated that I do not know of any transfers or sales of said ship except what is shown by the ship's papers. If the ship was restored I believe she would belong to the persons said to be the owners.

31. To the 31st interrogatory deponent answers:

There were no guns on board. The ship has no guns or ammunition belonging to them. There were a few revolvers, not more than three, which belonged to crew of the boat.

32. To the 32nd interrogatory deponent answers:

I have stated all that I know about the matter, and have stated my knowledge and belief in relation to the ship and cargo at the time of her capture.

S. BONET.

Sworn to and subscribed before me this 6th day of May, 1898.

J. M. PHIPPS,  
Prize Commissioner.

THE UNITED STATES OF AMERICA }  
 vs. } Prize.  
 THE SPANISH STEAMER PEDRO. }

Deposition of Juan Argacha, a witness produced, sworn, and examined in *preparatorio* on the 7th day of May, A. D. 1898, at the U. S. court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the Pedro.

1. To the first interrogatory deponent answers:

My name is Juan Argacha. I was born at Mundaca, Spain. During the last seven years I have been navigating the seas, but my place of residence is Mondaca, Spain. That has been my home ever since I was born. I am a subject of Spain. I am a married man and my family resides at Mondaca, Spain.

2. To the 2nd interrogatory deponent answers:

I was present at the time of the taking of the steamer by the man-of-war. I was on the bridge. The ship had a royal patent issued by the Spanish government.

3. To the 3rd interrogatory deponent answers:

The said ship was captured about twelve miles east of Morro Castle, Cuba, and five miles from shore. She was seized because war had been declared between Spain and the United States. The said ship sailed under the Spanish flag and she was carried into the port of Key West. We had on board one English flag and the international code signals. She was captured by the U. S. war ship "New

64 York." There were several ships in the distance.

4. To the 4th interrogatory deponent answers:

The name of the ship's master is Sebastian Bonet. I have known the said master for about ten years. I do not know who appointed him to the command of said vessel; I do not know where the master took possession or when or the name of the person who delivered the possession to him. I do not know where the master lives. He is a subject of Spain. He was born at Mayoca, Baleric islands. The captain is a married man; his family resides in Santander, Spain.

5. To the 5th interrogatory deponent answers:

The captured vessel is 1,618 registered tons. She had on board 35 mariners, including the captain. They are all Spanish subjects. They came on at different ports, and they were hired through the agent at Santander principally.

6. To the 6th interrogatory deponent answers:

None of the officers or mariners of the ship had any interest in the vessel or cargo, except the salary which was owed to them by the owners of the ship. I belonged to the ship at the time she was taken. I was first mate of the ship. I have known the ship for about eight years. I don't remember where I first saw her, but she was built at New Castle, England.

## 7. To the 7th interrogatory deponent answers:

The vessel's name is Pedro, ever since I knew her, about eight years. She was at one time called the Lilbon Tower, when she was sailing under the English flag. She had on board the royal patent issued by the Spanish government at the time she was seized.

65 She sailed from the port of Antwerp for Pensacola, Florida, via Cuban route. The ship, previous to her capture, had cleared from Havana.

## 8. To the 8th interrogatory deponent answers:

We carried a general cargo at the time of first setting sail. We had on board a part of the general cargo when we were captured. The said cargo was placed on the ship at the port from which we first sailed, and about twenty tons were put on our ship at Havana from another ship, viz., "Oliver." I cannot set forth the different species of cargo or the amount of each; the manifest will show what we had on board. A part of the cargo was unladen at Havana. I do not know the articles which were unladen at Havana.

## 9. To the 9th interrogatory deponent answers:

At the time the vessel was seized she belonged to the Compania La Fletcher. I know that the said ship did belong to the said company, and I do not know that the ownership has ever been changed. The said owners of the ship and members of the company are Spaniards by birth. The company resides at Bilboa, Spain, but I do not know who they are. I do not know how long they have resided there. They are a Spanish company. I do not know how long the said company have been in possession of the said ship, or from whom they purchased said vessel.

## 10. To the 10th interrogatory deponent answers:

I know nothing about any bill of sale or transfer of this ship.

## 11. To the 11th interrogatory deponent answers:

66 The cargo of the vessel was loaded at Antwerp and some at Havana, Cuba. I cannot set forth what quantity of each kind of goods were taken on board; about 2,000 tons was taken on board at Antwerp.

## 12. To the 12th interrogatory deponent answers:

The manifest will show the names of the shippers and the consignees. I do not know who they are. I do not know to what country they belong. I do not know where they live or where they carry on their business. I do not know where the cargo was to be delivered, and do not know whether they were at the risk of the shippers or the consignees. I think that if the goods had been delivered to their port of destination they would have belonged to the consignees.

## 13. To the 13th interrogatory deponent answers:

I know nothing about how many bills of lading was signed or whether any were signed.

## 14. To the 14th interrogatory deponent answers:

I know nothing about any bills of lading, invoices, or other papers relating to the cargo in the United States.

## 15. To the 15th interrogatory deponent answers:



We had a charter-party to go to Pensacola to carry some lumber to Europe. I heard this, but do not know it of my own knowledge.

16. To the 16th interrogatory deponent answers:

The ship's papers, such as the manifests, invoices, and others, were on board at the time she sailed from her last port.

67 None of the ship's papers were destroyed, burnt, or concealed or attempted to be concealed at the time of her capture.

17. To the 17th interrogatory deponent answers:

The said ship has never before been seized and condemned as a prize, so far as I know.

18. To the 18th interrogatory deponent answers:

I think I will loose all of my wages owing to this capture. I have not received any indemnity or any promise of indemnity for any loss which I have sustained or which I may sustain owing to this capture.

19. To the 19th interrogatory deponent answers:

I do not know whether or not said ship or cargo is insured.

20. To the 20th interrogatory deponent answers:

I believe that if we had arrived at our port of destination—I believe that if the cargo had been unladen—that it would have belonged to the consignees mentioned in the manifest.

21. To the 21st interrogatory deponent answers:

I do not know what country the cargo was grown, produced, or manufactured in.

22. To the 22nd interrogatory deponent answers:

The cargo at Antwerp was taken on board at the wharf and the cargo at Havana was taken on board from another vessel.

23. To the 23rd interrogatory deponent answers:

68 I know nothing about any bills of lading and invoices being on board any other vessel or in the United States or any other country.

24. To the 24th interrogatory deponent answers:

The only papers carried out of the ship were taken by the officer of the man-of-war, and I believe they are now in the possession of the prize commission.

25. To the 25th interrogatory deponent answers:

The bulk of the cargo was broken at Havana, where we discharged the cargo for that place, and has not been broken since.

26. To the 26th interrogatory deponent answers:

There were no passengers on the ship. There were no officers, soldiers, or marines on board. There were no citizens of the United States on board.

27. To the 27th interrogatory deponent answers:

I believe that all the passports, sea briefs, etc., were true and correct. I do not know of my own knowledge that the clearance papers and other papers relating to the ship were obtained from the custom authorities of Havana, but I believe it to be so. No person, to my knowledge, had any passport or letter of safe conduct at the time we were captured. The ship had a license from the Spanish government in the shape of a royal patent.

28. To the 28th interrogatory deponent answers:

I have not written any letter or other paper or signed the same since the capture of said vessel.

29. To the 29th interrogatory deponent answers:

69 At the time the vessel was captured we were steering for Santiago de Cuba. The course was not altered upon the appearance of the capturing vessel. Her course at all times, weather permitting, directed toward the port of her destination, shown by the ship's papers. She was not sailed wide or beyond her point of destination. I do not know what her distance was from the port of her destination at the time of her seizure. Her course was altered after her capture for the port of Key West.

30. To the 30th interrogatory deponent answers:

I do not know anything about the ship being sold or transferred. I believe that if the ship should be released that she would belong to the persons asserted to be the owners and none others.

31. To the 31st interrogatory deponent answers:

There were no guns mounted on board the ship. There were no arms or ammunition on board belonging to the ship.

32. To the 32nd interrogatory deponent answers:

The destination and property of the cargo is properly shown by the manifest and has been correctly stated by me, to the best of my knowledge and belief. I have already stated all that I know.

(S'd)

JUAN ARGACHA.

Sworn to and subscribed before me May 7th, 1898.

J. M. PHIPPS,

*Prize Comm'rs.*

70 EXHIBIT "A" (Annexed to Test Affidavit).

Form F.

Culliford, Clark & Co.; Crow, Rudolf & Co., Liverpool.

Pitch pine—"steam."

LIVERPOOL, 18th March, 1898.

It is this day mutually agreed between Messrs. G. H. Fletcher & Co., of the good steamship called the Pedro, under the Spanish flag, of 1,892 tons net register measurement or thereabouts, and classed 110 A 1, now loading in Antwerp for Cuba, and W. S. Keyser & Co., merchants, of Pensacola, Fla., Mobile, Ala., and Moss Point, Miss., per Crow, Rudolf & Co., of Liverpool, as agents—

That the said vessel shall with all convenient speed sail and proceed to Pensacola or Ship island, or as near thereto as she can safely get, and (being in hull, machinery, tackle and apparel, tight, staunch and strong, and in every way fitted for the voyage) there load (always afloat) from the said merchants, their agents or assigns as customary, a full and complete cargo to consist of sawn timber and / or deals and / or boards at merchants' option, which said merchants bind themselves to ship, not exceeding what she can reasonably stow and carry over and above her cabin, crew and fuel spaces, tackle,

apparel, provisions and furniture, and being so loaded proceed therewith as customary to Rotterdam (charterers to have option of ordering vessel to Antwerp instead s. of d. Rotterdam to discharge, in which case the rate of freight to be 113/9). The cargo to be applied for at port of discharge within twenty-four hours of steamer's arrival and reporting at custom-house (Sundays & holidays excepted) otherwise the master or agent is to be at liberty to put into lighters or land same at the risk and expense of the owners of the goods as ordered on signing bills of lading, or as near thereto as she can safely get, and there deliver her cargo at such wharf, dock, or place, as consignees of cargo may direct on arrival, always afloat, and in accordance with bills of lading.

1. Deck-load (if required by the master) to be supplied by charterers, of hewn and / or sawn timber and / or deals and / or boards at their option. No timber or deals to be cut without the written permission of the shippers, and number of cuts (if any) to be inserted in bill of lading.

No bulkheads or middle stanchions to be removed unless with captain's consent.

2. The act of God, restraint of princes and rulers, public enemies or people, pirates or robbers, barratry of the master or crew, fire from any cause or wheresoever occurring, floods, droughts, perils of the sea or other waters, riots, strikes or stoppage of labour, collisions, stranding, or other accidents of the seas, rivers and navigation of whatsoever kind, (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the ship-owner, not resulting, however, in any case from want of diligence by the owners of the ship or any of them, or by the ship's husband or manager,) or any other extraordinary occurrence beyond the control of either party, always mutually excepted. Vessel to have liberty to sail with or without pilots, and to tow and assist vessels in all situations; also to call at any port or ports for coal and / or other supplies.

3. In consideration whereof, freight is to be paid as follows:—

Five pounds, eleven shillings, and three pence sterling (£5 11 3) per St. Petersburg standard of 165 cubic feet, as customary at the port of discharge. Sufficient suitable timber and / or deals and / or boards at merchants' option to be supplied for beam fillings and stowage. Twenty per cent. of the entire cargo to be at two-thirds rate of freight.

4. Freight to be paid as follows: One-third in cash on arrival (less foreign advances, if any), and the remainder on right delivery of cargo, in cash, less two per cent. If discharged on the continent, freight to be paid at current exchange. Freight on deals and boards payable on intake measure of quantity delivered, as customary.

5. No timber to be required shorter than 12 feet, and no deals and / or boards shorter than 12 feet. Charterers agree to furnish only such cargo as will go through vessel's hatches. Deals & boards to be supplied for number 4 hold.

6. Bills of lading to be signed as presented without prejudice to this charter, but any difference of freight to be settled on signing

bills of lading, if under chartered rate, in cash less interest and insurance, if over chartered rate, by master's draft, payable five days after arrival at port of discharge. In the absence of fraud, of clerical, or obvious errors, the captain's signature to bill of lading to be accepted as binding on owners, and in case of short delivery of cargo owners or captain shall furnish an extended protest, if required, showing the cause of such short delivery.

7. Sufficient cash for ship's ordinary disbursements at port of loading to be advanced the master by charterers or their agents at the current rate of exchange, subject to insurance and  $2\frac{1}{2}$  per cent. commission, master to give his draft on owners or consignees, as required and customary to cover same, insurance to be done at current Liverpool rates. Charterers or their agents shall in no way be responsible for the appropriation of said advance.

8. Sixteen working days are to be allowed charterers for furnishing the cargo at port of loading.

9. Lay days to commence on the day after the vessel is ready (in loading berth) to receive cargo, and written notice given of same to charterers, but days for discharging shall be according to the custom of the port of discharge. In the computation of the days allowed for delivering and receiving the cargo shall be excluded any time lost by reason of fire, droughts, floods, storms, strikes, lock-outs, combinations of workmen, or any extraordinary occurrence beyond the control of the charterers or of the receivers of the cargo.

10. Should the cargo not be delivered to vessel within the specified time, for each and every day over and above said lay days, charterers are to pay day by day the sum of four pence sterling per net register ton demurrage, any detention through quarantine not to count in lay days.

11. Cargo to be delivered to vessel alongside, and to be taken from alongside at port of discharge, always within reach of ship's tackles, and at merchant's risk and expense, vessel always lying afloat. Lighterage, if any, to be at the risk and expense of cargo.

12. Should the vessel not be in all respects ready for cargo and at her loading place on or before the 18th of May, 1898, charterers or their agents have the option of cancelling this charter.

13. If required by charterers lay days are not to commence at loading port before the 5th May, 1898.

14. The cargo to be delivered alongside at merchant's risk and expense, and to be received by the master and secured by the ship's dogs and chains when so delivered, and to be then at ship's risk. Should the master order more timber or deals or boards alongside than the ship requires for loading, the expense of taking it from and back to the booms or mills to be paid by the ship. The ship to discharge each lighter having lumber for cargo or broken stowage without unreasonable detention, and the master to give the charterers or their agents written notice three clear days before broken stowage is required. When the ship is ready to load, the master to give charterers written notice of the quantity of cargo required.

15. Steamer to furnish steam at her own expense if required by charterers to do so (for loading cargo) and labour combinations do

not prevent steamer to load at night and holidays, if required, charterers paying extra expenses incurred.

16. Charterers to have the privilege of shipping other lawful merchandise, but vessel shall then receive a lump sum equal to the freight of a cargo of timber as above, any excess charges on such cargo, over what they would be on timber, shall be paid by charterers, but if these charges should be less than on timber, charterers are to have the benefit of the difference.

17. The vessel to be consigned to charterers or their agents at port of loading, paying them  $2\frac{1}{2}$  per cent. address commission on estimated amount of freight.

18. Charterers or their agents to appoint and pay a stevedore to do the stowing of the cargo under the supervision of the master, to supply dogs and chains, pay wharfage, custom-house, tonnage, quarantine dues (but including fumigating expenses should such be incurred) except the ship arrives with sickness on board and consular fees for entrance and clearance, harbor master fees, and pilotage in and out, at two (\$2.00) dollars per load of 50 cubic feet, on the entire cargo taken aboard at port of loading.

19. A brokerage of five per cent. on amount of charter is due by ship to Culliford, Clark & Co. on the signing hereof, ship lost or not lost. The charterers' responsibility under this charter shall cease as soon as the cargo is shipped and bills of lading signed, provided all the conditions called for in this charter have been fulfilled, or provided for by bills of lading.

Bills of lading to contain the following clause: All other conditions and exceptions as per charter-party dated 18 March, 1898.

20. Any dispute under this charter-party shall be settled at the port where it arises. The custom of each port to be observed in all cases where not specially expressed.

21. General average, if any, to be adjusted according to York / Antwerp rules, 1890.

Penalty for non-performance of this agreement to be the proven damages not exceeding the estimated amount of freight.

Owners to have privilege of calling at Pensacola first for coal and for pig iron. Charterers to have the option of loading steamer at both Pensacola and Ship island, in which case they are to pay owners of steamer the sum of twenty-five pounds extra.

(S.)

G. H. FLETCHER & CO.

(S.)

CROW, RUDOLF & CO., *As Agents.*

Witness, C., R. & Co.:

(S.) C. W. MASON.

18, 3, '98.

[Printed on the margin.]

A true and correct copy of the original.

CULLIFORD, CLARK & CO.

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## EXHIBIT "B" (Annexed to Test Affidavit).

By the President of the United States of America :

*A Proclamation.*

Whereas, by an act of Congress approved April 25, 1898, it is declared that war exists, and that war has existed since the 21 day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain, and

Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris,

Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim :

First. The neutral flag covers enemy's goods with the exception of contraband of war.

Second. Neutral goods not contraband of war are not liable to confiscation under the enemy's flag.

Third. Blockades, in order to be binding, must be effective.

Fourth. Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; provided, that nothing herein contained shall apply to Spanish vessels having on board any officers in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

Fifth. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States shall be permitted to enter such port or place, and to discharge her cargo and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

Sixth. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest ground of suspicion of a violation of law.

In witness whereof, etc.

WILLIAM M'KINLEY.

Done at the Dep't of State, etc., this 26th day of April, etc.



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## EXHIBIT "C" (from Ship's Papers).

No. 96.

Real Patente de Navegacion Mercantil.

Comandancia de Marina de Santander.

Don Alfonso XIII.

Por la Gracia de Dios y la Constitucion, Rey de Espana, y en su Nombre, y Durante su Menor Edad,

La Reina Regente del Reino.

Por cuanto he concedido permiso a la Compania de Navagacion "La Flecha" para que con el Vapor nombrado "Pedro" de su propiedad del folio — de la quinta lista de embarcaciones de la inscripcion del puerto de Santander, de 99' 90 metros de eslora 11' 82, de manga y 8' 47, de puntal, pueda navegar y comerciar en todas los mares y puertos del Globo.

Por tanto, ordeno que, constando la pertenencia de la embarcacion al referido la Compania de Navagacion "La Flecha" o a otro subdito espanol, el Comandante de Marina, sus subalternos ó cualquiera otro funcionario á quien corresponda, concurren á facilitarle lo que necesitase, asi por lo respectivo á su armamento, como por la que mira á su tripulacion, de que debiera formarse lista, y obligarse al Capitan que manda dicho buque á cuidar de su conservacion y responder de sus faltas, segun previenen las Ordenanzas de Marina, permitendole salir á navegar y comerciar bajo las reglas establecidas.

Y mando á las Oficiales Generales ó particulares Comandantes de escuadra y bajeles á los Capitanes Generales de los Departamentos de Marina y demas autoridades de alta y otros cualesquiera Oficiales ó dependientes de la Armada; á los Capitanes y Comandantes  
73 Generales de districtos y provincias, las autoridades civiles y judiciales de los puertos de estos dominios, y á todos los demas subditos espanoles á quienes correspondiere, no le pongan embarzo ne causen molestia ó detencion alguna, antes bien le auxilien ó faciliten lo que hubiere menester para su regular navagacion y legitimo comercio. Y á los subditos de Reyes, Principes y Republicas amigas y aliadas; a los Jefes, Gobernadores ó Comandantes de sus provincias, plazas, escuadras y bajeles, remiando que asimismo no le pongan impedimento á su libre navagacion, entrada, salida ó detencion en los puertos á los cuates deliberadamente ó por accidente se condujere, y le permitan ejercer en ellos su legitimo comercio, bastimentarse y proveerse de lo necesario para continuarla; á cuyo fin he mandado despachar esta Real Patente, la cual, firmada por Mi y refrendada por el Ministro de Marina, servira y tendra fuerza á considerandose en todas circunstancias como exclusivamente inherente al Vapor "Pedro," interin este buque se halle bajo

el pabellon Espanol y no varie de capacidad y figura en el casco y aparejo.

Dado en Palacio á cuatro de Octubre de Mil ochocientas ochenta y siete.

Y— la Reina Regente.  
(Ministerio de Marina.)

RAFAEL RMARIAS.

	Toneladas.
Total .....	2.537' 17
Tonelaje: Correspondiente á los descuentos .....	918' 37
Neto .....	1.618' 80

Esta Real Patente de Navegacion Mercantil para todas los mares del Globo, numero 96 se expide por mi el infrascrito Comandante de Marina, en el dia esta fecha, extendida a favor del Vapor 74 nombrado "Pedro" del folio — de la lista de embarcaciones de esta Provincia naval, habiendo precedido el cumplimiento de todas los requisitos prevenidos en las disposiciones que rigen sobre esta materia, y con la obligacion de devolverlo ó estar á las resultas de su perdida ó extravio, y hacer en todo tiempo buen uso de el y no ejercitarse en el comercio ilicito.

Dado en Santander, á 16 de Setiembre de 1889.

NOTA.—Esta Patente debiera contener siempre tantos sellos por valar de setenta reales vellon como periodos de tres anos cuente desde la fecha de su expedicion; bien entendido que dichos sellos deberan colocarse en todo el primer ano de cada periodo bajo la pena de una multa de cinco reales vellon por cada tonelada de las que mida el buque, en caso de omision injustificable, y cuya multa se cargara al dueno del mismo.

Los sellos de que se trata seran precisamente los designados para objeto en las Reales ordenes vigentes.

BUENEVENTA PILON Y STERLING.

75 EXHIBIT "D" (from Ship's Papers).

No. 63. Form No. 1931a. Port of Antwerp.

UNITED STATES OF AMERICA:

*Bill of Health.*

I, Geo. F. Lincoln, consul (the person authorized to issue the bill) at the port of Antwerp, do hereby state that the vessel hereinafter named clears from this port under the following circumstances:

Name of vessel, Pedro; nationality, Spanish; rig, schooner; master, Sebastian Bonet; tonnage, gross, 2,872; net, 1,618; iron or wood, iron; number of compartments for cargo, 4; for steerage passengers, none; for crew, 3; name of medical officer, none.

Number of officers, 3; number of crew, including petty officers,

31; number of passengers, cabin, none; number of passengers, steerage, none; number of persons on board, all told, 34.

Port of departure, Antwerp.

Where last from, Havre, in ballast.

Number of cases of sickness and character of same during last voyage, none.

Vessel engaged in Atlantic trade, and plies between Antwerp, Cuba, and the United States.

Sanitary condition of vessel, good.

Nature, sanitary history, and condition of cargo, water ballast, good.

Source and wholesomeness of water supply, Antwerp Water Works Co., Ltd.

Source and wholesomeness of food supply, Belgium, best.

Sanitary history and health of officers and crew, good.

76 Sanitary history and health of passengers, cabin, none.

Sanitary history and health of passengers, steerage, none.

Sanitary history and condition of their effects, none.

Prevailing diseases at port and vicinity, pneumonia.

Location of vessel while discharging and loading—open bay or wharf—wharf.

*Number of Cases and Deaths from the Following-named Diseases During the Past Two Weeks.*

Diseases.	No. cases.	No. deaths.	Remarks.
			(Any conditions affecting the public health existing in the port of departure or vicinity to be here stated. When there are no cases or deaths entry to that effect must be made.)
Yellow fever.....	None.	None.	
Asiatic cholera....			
Cholera nostras or cholerae.....			
Smallpox.....			
Typhus.....			
Plague.....			

I certify that the vessel has complied with the rules and regulations made under the act of February 15, 1893, and that the vessel leaves this port bound for Pensacola, for in the United States of America, via Havana, Santiago, & Cienfuegos.

Given under my hand and seal this 24th day of March, 1898.

[SEAL.]

(Signature of consular officer :) GEO. F. LINCOLN,

[SEAL.]

U. S. Consul. [SEAL.]

Received \$5.00 /s 26-.

Consular fee No. 63.

77

## EXHIBIT "E" (from Ship's Papers).

Art. 179, customs.

Regulations of 1892.

Cat. No. 491.

No. 80294.

*Certificate of Payment of Tonnage Duty.*

(To be issued in all cases under seals of collector and naval officer.)

## U. S. CUSTOM-HOUSE, PORT OF NEW ORLEANS.

I hereby certify that on this 27 day of May, eighteen hundred and ninety-eight, the tonnage duty of six cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, was paid on the Span. S/S Pedro—Bonet, master—of Bilboa, by A. K. Miller & Co., as per American ad-measurement, 1,619 tons, amounting to ninety-seven dollars and fourteen cents.

The above payment was made on entry from Liverpool, Eng., on the 28 day of Jan'y, 1898, being the 4th payment on entry in the year beginning M'ch 2, 1897.

*Schedule of Payments.*

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st....	M'ch 2, '97	1,619	6	\$97 14	New Orleans.
2nd.....	June 5, '97	1,619	3	48 57	Sabine Pass.
3rd.....	Oct. 16, '97	1,619	6	97 14	Galveston.
4th.....	Jan'y 28, '98	1,619	6	97 14	New Orleans.
5th.....					

P. O. LABATUS,  
*Naval Officer.*

CALHOUN FLUKER,  
*D'y Collector.*

78

## EXHIBIT "F" (from Ship's Papers).

Art. 179, customs.

Regulations of 1892.

Cat. No. 491.

No. 78929.

*Certificate of Payment of Tonnage Duty.*

(To be issued in all cases under seals of collector &amp; naval officer.)

## U. S. CUSTOM-HOUSE, PORT OF GALVESTON.

I hereby certify that on the 16 day of Oct., eighteen hundred and ninety-seven, the tonnage duty of 6 cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, was paid on the Sp. S. S. Pedro—S. Bonet, master—

of Bilbao, by Wm. Parr & Co., as per American admeasurement; 1,619 tons, amounting to ninety-seven dollars fourteen cents.

The above payment was made on entry from Liverpool on the 16 day of Oct., 1897, being the 3 payment on entry in the year beginning 2 M'ch, 1897.

*Schedule of Payments.*

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st.....	2 M'ch, 1897	1,619	6	\$97 14	New Orleans.
2nd.....	5 June, "	1,619	3	48 57	Sabine Pass.
3rd.....	16 Oct., "	1,619	6	97 14	Galveston.
4th.....					
5th.....					

No naval officer.

P. G. WREN,  
*D'y Collector.*

79 EXHIBIT "G" (from Ship's Papers).

Art. 179, customs.

Regulations of 1892.

Cat. No. 491.

No. 71133.

*Certificate of Payment of Tonnage Duty.*

(To be issued in all cases under seals of collector and naval officer.)

U. S. CUSTOM-HOUSE, PORT OF SABINE PASS, TEXAS.

I hereby certify that on the 5th day of June, eighteen hundred and ninety seven, the tonnage duty of 3 cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, was paid on the Spanish S/S Pedro—S. Bonet, master—of Bilbao, Spain, by R. A. M'Reynolds & Co., as per American admeasurement, 1,619 tons, 48 dollars 57 cents.

The above payment was made on entry from Cienfuegos on the 5th day of June, 1897, being the second payment on entry in the year beginning March 2, 1897.

*Schedule of Payments.*

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st.....	Mar. 2, '97	1,619	6	\$97 14	New Orleans.
2nd.....	June 5, "	1,619	3	48 57	Sabine Pass.
3rd.....					
4th.....					
5th.....					

No naval officer.

W. F. M'CLANAHAN,  
*D'y Collector.*

## 80 EXHIBIT "H" (from Ship's Papers).

Art. 179, customs.

Regulations 1892.

Cat. No. 491.

No. 71307.

*Certificate of Payment of Tonnage Duty.*

(To be issued in all cases under seals of collector and naval officer.)

## U. S. CUSTOM-HOUSE, PORT OF NEW ORLEANS.

I hereby certify that on this 2nd day of March, eighteen hundred and ninety-seven, the tonnage duty of six cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens of the American merchant marine, and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, was paid on the Span. S/S Pedro—Bonet, master—of Bilboa, by A. K. Miller & Co., as per American admeasurement, 1,619 tons, amounting to ninety-seven dollars and fourteen cents.

The above payment was made on entry from Liverpool, Eng., on the the 2nd day of M'ch, 1897, being the 1st payment on entry in the year beginning M'ch 2nd, 1897.

*Schedule of Payments.*

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st.....	M'ch 2, '97	1,619	6	\$97 14	New Orleans.
2nd.....					
3rd.....					
4th.....					
5th.....					

F. H. SNYDER,  
*Naval Officer.*J. D. CRAWFORD,  
*D'y Collector.*

## 81 District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA  
against  
THE STEAMER "PEDRO" AND HER CARGO. } In Prize.

Please take notice upon the proceedings had in this action and upon the annexed affidavit of Wilhelmus Mynderse we shall make application before the Honorable James W. Locke, district judge, in the United States court-rooms, in the city of Jacksonville, Florida, on Tuesday, June 21st, 1898, at three o'clock in the afternoon of that day, that the said steamer "Pedro" be ordered to New York



for sale, and for such other, further, and different relief as in law and justice should be administered.

New York, June 17, 1898.

WILHELMUS MYNDERSE,

*Proctor for Claimants.*

To Hon. Joseph N. Stripling, United States district attorney;  
Edward K. Jones, Esq., special counsel for libellant.

82 District Court of the United States for the Southern District  
of Florida.

UNITED STATES OF AMERICA

*against*

THE STEAMER "PEDRO" AND HER CARGO. }

STATE OF NEW YORK, }

*Southern District of New York,* } ss:

Wilhelmus Mynderse, being duly sworn, deposes and says that he is one of the proctetors for the claimants of the steamer "Pedro" in the above-entitled matter.

Deponent further says that the said steamer "Pedro" has been condemned as prize, and tha-subsequent to such condemnation proceedings were taken at the instigation of the United States for her appraisal, with the declared purpose on the part of the United States of taking the said vessel for their own use and as their own property.

Deponent further says tha- said appraisal was concluded on or about the 31st day of May, 1898; but that, as deponent is informed and believes, the said steamer "Pedro" has not been taken by the United States under the said appraisal, nor have the United States complied with the statutory requirements of deposit in connection with taking the vessel.

Deponent further says that the cargo of the "Pedro" has been discharged, and that her officers and crew have left her or are on the point of leaving her for the purpose of returning to Spain,  
83 and that the steamer will seriously depreciate and deteriorate of left without a crew to keep her machinery department in order.

Deponent further says the steamer "Pedro" is a large and valuable steamer, and that the most advantageous market for her will be the market of New York.

WILHELMUS MYNDERSE.

Sworn to before me this 17th day of June, 1898.

[SEAL.]

(Endorsed:) "Pedro." Affidavit and notice. Filed this 21 day of June, 1898. E. O. Locke, clerk, by Louis Starke, deputy clerk. Due service of a copy of the within affidavit and notice is hereby admitted this 17th day of June, 1898. Edward K. Jones, special counsel U. S. Gov't in prize cases.

84 District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA  
*against*  
 THE STEAMER PEDRO AND HER CARGO. } In Prize.

The claimant of the steamer Pedro above named having applied to this court, upon the proceedings had herein and upon the affidavit of Wilhelmus Mynderse, verified June 17, 1898, for an order directing that said steamer be ordered to New York for sale, now, after hearing Frederick Green in support of said application and Hon. Joseph N. Strippling, United States attorney appearing for the United States, it is—

Ordered that the motion upon said application be denied upon the ground that the United States has elected to take said steamer under appraisal heretofore made.

Jacksonville, Fla., June 22, 1898.

JAMES W. LOCKE, *Judge*.

Filed this 22 day of June, 1898.

E. O. LOCKE, *Clerk*,  
 By LOUIS STARKE, *Deputy Clerk*.

85 District Court of the United States, Southern District of Florida. In Admiralty.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing document of eighty-four numbered pages is a true copy of the record and exhibits in the cause of The United States vs. Spanish Steamer "Pedro," &c., prize, lately adjudicated in said court, and remaining on file in my office.

Seal District Court of the United States, Southern District of Florida. Witness my hand and the seal of said court this ninth day of August, in the year of our Lord one thousand eight hundred and ninety-eight, and of American Independence the one hundred and twenty-third.

EUGENE O. LOCKE, *Clerk*.

86 List of papers filed in this court and forwarded to the Supreme Court of the United States in the case of prize steamer "Pedro."

- #1 to 2. Plans of ship.
- 3 " 11. Certificates of anchors & chains.
- 12. Royal patent.
- 13 " 14. American bills of health.
- 15. Protest.
- 16 " 48. Manifests.
- 49 " 58. Bills of lading,
- 59 " 63. Spanish custom-house papers.
- 74. Spanish letter.
- 75 " 83. Certificates of tonnage duty.
- 84. Crew rool book.
- 85. Log book.
- 86. Reclamacion Rousselon Freres & Co. & b. l.

Respectfully,

[SEAL.]

E. O. LOCKE, *Clerk*,

By J. OTTO, *Dep. Clerk*.

Endorsed on cover: Case No. 16,957. S. Florida D. C. U. S. Term No., 372. The Steamer "Pedro," Sebastian Bonet, claimant, appellant, vs. The United States. Filed August 18th, 1898.

No.

Brief

Supreme

THE

THE

Brief for

# Supreme Court of the United States.

THE STEAMER PEDRO, SEBASTIAN  
BONET,

*Claimant and Appellant,*

*against*

THE UNITED STATES OF AMERICA,  
*Libellants and Respondents.*

No. 115.  
October Term,  
1899.

## BRIEF FOR THE APPELLANT.

### Statement of Facts.

This appeal runs from a decree of the District Court of the United States for the Southern District of Florida, bearing date May 27, 1898, condemning the steamer *Pedro* as lawful prize of war in an action instituted in that Court by the United States of America.

The libel was filed April 23d, 1898 (*Libel*, p. 1), and on the same day process issued against the steamer, then lying in the port of Key West, Florida, and she was seized by the Marshal (*Monition and Return*, pp. 2, 3).

The time for the claimant to appear having been extended until May 23d, Sebastian Bonet, the master of the steamer, on that day filed his claim "as bailee for the interests of the owners of the steamer according to the test affidavit" annexed to the claim (*Claim*, p. 4).

The depositions of the master and of Juan Argacha, the first officer, were taken *in preparatorio* upon the standing

interrogatories by the Prize Commissioners upon the 6th and 7th days of May (*Depositions in Preparatorio*, pp. 37-44).

The case came on for trial before Judge Locke on May 25th, and on May 27th he made an order denying the application of the claimant for leave to take further or additional proofs (*Order*, p. 13), and entered a decree condemning the steamer as legal prize of war (*Decree*, pp. 13, 14).

On the same day the claimant filed assignments of error (*Ass. of Error*, p. 14), and gave notice of appeal in open court from the decree (*Notice of App.*, p. 15; *Abstract of Minutes*).

The appeal was formally allowed by the District Judge (p. 15), and the appeal bond given by the claimant was approved by him. A citation thereupon issued which was duly served upon the District Attorney (*Bond*, pp. 15, 16; *Record*, p. 24).

The *Pedro* was a steamer hailing from the port of Bilbao, Spain, where she was owned by the Compania de Navegacion la Flecha, a Spanish corporation.

She was documented to "navigate as a merchant vessel "according to established laws" (á navegar y comerciar bajo las reglas establecidas), with authority to engage in "legitimate commerce" (legítimo comercio) "so long as "she might sail under the Spanish flag without change of "her capacity, shape or equipment" (interin este buque se halle bajo el pabellon Espanol y no varie de capacidad y figura en el casco y aparejo).

*Royal Patent, Ex. C.*, pp. 49, 50.

She had been built in Newcastle, England, in 1883, and until 1889 was known as the English steamer *Lilburn Tower*, at which time her register was transferred from England to Spain, and her ownership was placed in the Compania de Navegacion la Flecha, under the management of the house of G. H. Fletcher & Company, of Liverpool, England. At that time her name was changed to *Pedro*, and she thereafter carried the Spanish flag (*Test. Afft.*, p. 5; *Deps. in Prep. Ans. to 7th and 9th Ints.*, p. 38).



The *Compania de Navegacion la Flecha* is a corporation organized under the laws of the Kingdom of Spain. Its capital is divided into one thousand shares, of which two hundred shares have stood in the name of Thomas Hughes Jackson, and two hundred in the name William R. P. Jackson of the firm of G. H. Fletcher & Company, of Liverpool, both British citizens; while six hundred shares have stood in the names of Jose Serra y Font, Raimundo Real de Assua, and Ramon Real y Assua, residents and citizens of Spain (*Test. Affil.* 5).

The certificates of all the shares of the corporation, however, have in fact been owned and possessed by Thomas Hughes Jackson for many years, who has thereby been constituted the sole beneficial owner of the steamer (*Test. Affil.* 5).

The claimant became master of the *Pedro* at the time of her transfer to the Spanish flag, and continued in command of her up to the time of her capture.

During the entire nine years of his command the steamer has been engaged in the transportation of cargo for hire as a merchant vessel under the management of G. H. Fletcher & Company of Liverpool. Her voyages have begun in Europe, where she has taken cargo for Cuban ports, from which ports, upon discharge of such cargo, she has proceeded to ports of the United States, where she has taken cargo for a port of discharge in Europe, the round voyage occupying about three months (*Test. Affil.*, p. 6).

The steamer had a cargo capacity of about 5,000 tons. Between March 20th and March 25th, 1898, she took on board at Antwerp, Belgium, about 2,000 tons of cargo for Havana, Santiago de Cuba, and Cienfuegos, Cuba, consisting of rice, hardware, paper, cement and ordinary general cargo (*Test. Affil.*, p. 6).

She sailed from Antwerp March 25th, bound for Pensacola, Florida, via the Cuban ports above named, she then being under charter engagements with the firm of W. S. Keyser & Company to proceed to Pensacola, Fla., and/or Ship Island, Miss., to take a cargo of lumber to Rotterdam or Antwerp (*Test. Affil.*, p. 6; *Deps. in Prep. Ans. to 15th Int.*, p. 39; *Charter Party, Ex. A*, pp. 44-47).

The steamer's freight list on the cargo destined from

Antwerp to the Cuban ports was about \$7,000, which is stated to be barely sufficient to cover the expense of receiving, transporting and delivering the cargo. The charter hire on the contemplated cargo from Pensacola or Ship Island to Antwerp or Rotterdam would have been about \$25,000 (*Test. Afft., p. 6*).

The steamer arrived in Havana April 17th, and there discharged about 1,600 tons of cargo. On the 20th of April she received from the steamer *Alava* about twenty tons of general cargo, destined for Santiago de Cuba, which the *Alava* had brought from European ports and desired to transship, the same having never been landed in Cuba (*Test., Afft., p. 6*). On April 22d, at about half after three o'clock in the afternoon, the steamer left Havana for Santiago de Cuba, in prosecution of her voyage towards Pensacola. The master was at the time ignorant of any state of war between the United States and the Kingdom of Spain, and without any notice thereof, and it was before any known outbreak of hostilities between the two nations (*Test. Afft., p. 7*).

At about six o'clock on the same day, when the steamer was distant twelve miles from Havana, she was captured by the United States cruiser *New York*, and was sent in to Key West, where she and her cargo were libeled as prize (*Test. Afft., p. 7; Deps. in Prep., Ans. to 3d Int., pp. 37, 38*).

She carried no arms or ammunition and made no resistance (*Test. Afft., p. 7; Deps. in Prep., Ans. to 3d and 31st Ints., pp. 37, 40*). She carried no contraband, "no officers, soldiers or marines," and no despatches (*Deps. in Prep., Ans. to 8th, 26th and 28th Ints., pp. 38, 40*).

The capture of the *Pedro* was almost the earliest incident in what proved to be a war between Spain and the United States. The capture of the *Buena Ventura* a few hours earlier was absolutely the first overt act.

On April 20th the President of the United States approved the following joint resolution of the two houses of Congress:

“ *Resolved*, By the Senate and the House of Representatives of the United States of America, in Congress assembled:

“ *FIRST*.—That the people of the island of Cuba are, and of right ought to be, free and independent.

“ *SECOND*.—That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

“ *THIRD*.—That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

“ *FOURTH*.—That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction or control over said island, except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people.”

30 *U. S. Statutes at Large*, p. 738.

On the same day Luis Polo de Bernabe, the Spanish Minister to the United States, wrote as follows to the Secretary of State:

“ LEGATION OF SPAIN,

“ WASHINGTON, D. C., April 20, 1898.

“ MR. SECRETARY:

“ The resolution adopted by the Congress of the United States of America and approved to-day by the President is of such a nature that my permanence in Washington becomes impossible, and obliges me to request from you the delivery of my passports. The protection of the Spanish interests will be intrusted to the French Ambassador and to the Austro-Hungarian Minister. On this occasion, very painful to me, I have the honor to

“renew to you the assurances of my highest consideration.

“LUIS POLO DE BERNABE.

“The Hon. JOHN SHERMAN, Secretary of State of  
“the United States of America.”

Upon the following day the Minister of Foreign Affairs of Spain addressed the following letter to the United States Minister at Madrid:

“MADRID, April 21, 1898.

“Hon. STEWART L. WOODFORD,

“Minister of the United States of America.

“Dear Sir: In compliance with a painful duty I have the honor to inform Your Excellency that the President having approved a resolution of both Chambers of the United States, which in denying the legitimate sovereignty of Spain and threatening an immediate armed intervention in Cuba, is equivalent to an evident declaration of war, the Government of His Majesty has ordered its Minister in Washington to withdraw without loss of time from the North American territory, with all the personnel of the Legation. By this act the diplomatic relations which previously existed between the two countries are broken off, all official communications between their respective representatives ceasing, and I hasten to communicate this to Your Excellency in order that on your part you may make such dispositions as seem suitable. I beg Your Excellency to acknowledge the receipt of this note at such time as you deem proper, and I avail myself of this opportunity to reiterate to you the assurances of my distinguished consideration.

“P. GULLON.”

At 6.30 A. M. on April 22d, Admiral Sampson, in command of the North Atlantic fleet, sailed from Key West to undertake the blockade of that part of the northern coast of Cuba extending from Cardenas to Bahia Honda (*Report of Sec. of Navy, Nov. 15, 1898, accompanying Presl.'s Message to Congress of December 5, 1898, Vol. II., p. 904*).

On that day the President issued the following proclamation:

“Whereas, by a joint resolution passed by the Congress and approved April 20, 1898, and com-

"municated to the Government of Spain, it was  
 "demanded that said Government at once relin-  
 "quish its authority and Government in the Island  
 "of Cuba and withdraw its land and naval forces  
 "from Cuba and Cuban waters; and the President  
 "of the United States was directed and empow-  
 "ered to use the entire land and naval forces of  
 "the United States, and to call into the actual  
 "service of the United States the militia of the  
 "several States to such extent as might be neces-  
 "sary to carry said resolution into effect; and

"Whereas, in carrying into effect said resolution,  
 "the President of the United States deems it  
 "necessary to set on foot and maintain a block-  
 "ade of the North coast of Cuba, including all  
 "ports on said coast between Cardenas and Bahia  
 "Honda, and the port of Cienfuegos on the South  
 "coast of Cuba;

"Now, therefore, I, William McKinley, President  
 "of the United States, in order to enforce the said  
 "resolution, do hereby declare and proclaim that  
 "the United States of America have instituted, and  
 "will maintain a blockade of the North coast of  
 "Cuba, including ports on said coast between Car-  
 "denas and Bahia Honda and the port of Cienfuegos  
 "on the South coast of Cuba, aforesaid, in pursu-  
 "ance of the laws of the United States and the law  
 "of nations applicable to such cases. An efficient  
 "force will be posted so as to prevent the entrance  
 "and exit of vessels from the ports aforesaid, Any  
 "neutral vessel approaching any of said ports, or  
 "attempting to leave the same, without notice or  
 "knowledge of the establishment of such blockade,  
 "will be duly warned by the Commander of the  
 "blockading forces, who will endorse on her register  
 "the fact, and the date, of such warning, where such  
 "endorsement was made; and if the same vessel  
 "shall again attempt to enter any blockaded port,  
 "she will be captured and sent to the nearest con-  
 "venient port for such proceedings against her and  
 "her cargo as prize, as may be deemed advisable.

"Neutral vessels lying in any of said ports at the  
 "time of the establishment of such blockade will  
 "be allowed thirty days to issue therefrom.

"In witness whereof, I have hereunto set my  
 "hand and caused the seal of the United States to  
 "be affixed.

"Done at the City of Washington, this 22d day  
 "of April, A. D. 1898, and of the Independence of

“ the United States the one hundred and twenty-second.

“ [SEAL.]

WILLIAM MCKINLEY.

“ By the President:

“ JOHN SHERMAN,

“ Secretary of State.”

*Messages and Papers of the President, Vol. X., pp. 202, 203; 30 U. S. Statutes at Large, 1769.*

The *New York*, which captured the *Pedro*, was one of Admiral Sampson's fleet, and the remaining vessels of the fleet appear to have been in the immediate vicinity (*Depos. in Prep., Ans. to 3d Int., p. 38*).

The *Pedro*, from the time of being libeled in Key West, April 23d, continued in that port until condemned, May 27, 1898 (*Test. Affl., p. 7*).

On the 25th of April, the following Act of Congress was presented to and signed by the President:

“ *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:* First, That war be, and the same is hereby, declared to exist, and that war has existed since the twenty-first day of April, Anno Domini, eighteen hundred and ninety-eight including said day, between the United States of America and the Kingdom of Spain.

“ SECOND.—That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry this act into effect.

“ Approved April 25, 1898.”

*30 U. S. Statutes at Large, 364.*

On the 26th of April the President of the United States issued a further proclamation, as follows:

“ WHEREAS. By an act of Congress, approved April 25, 1898, it is declared that war exists, and



“ that war has existed since the 21st day of April,  
 “ A. D. 1898, including said day, between the  
 “ United States of America and the Kingdom of  
 “ Spain; and

“ WHEREAS, It being desirable that such war  
 “ should be conducted upon principles in harmony  
 “ with the present views of nations and sanctioned  
 “ by their recent practice, it has already been an-  
 “ nounced that the policy of this Government will  
 “ be not to resort to privateering, but to adhere to  
 “ the rules of the Declaration of Paris.

“ NOW, THEREFORE, I, William McKinley, Presi-  
 “ dent of the United States of America, by virtue  
 “ of the power vested in me by the Constitution  
 “ and the laws, do hereby declare and proclaim:

“ FIRST.—The neutral flag covers enemy's goods  
 “ with the exception of contraband of war.

“ SECOND.—Neutral goods not contraband of war  
 “ are not liable to confiscation under the enemy's  
 “ flag.

“ THIRD.—Blockades, in order to be binding,  
 “ must be effective.

“ FOURTH.—Spanish merchant vessels, in any  
 “ ports or places within the United States, shall be  
 “ allowed till May 21, 1898, inclusive, for loading  
 “ their cargoes and departing from such ports or  
 “ places; and such Spanish merchant vessels, if  
 “ met at sea, by any United States ship, shall be per-  
 “ mitted to continue their voyage, if, on examination  
 “ of their papers, it shall appear that their cargoes  
 “ were taken on board before the expiration of the  
 “ above term; Provided, that nothing herein con-  
 “ tained shall apply to Spanish vessels having on  
 “ board any officer in the military or naval service  
 “ of the enemy, or any coal (except such as may be  
 “ necessary for the voyage), or any other article  
 “ prohibited or contraband of war, or any dispatch  
 “ of or to the Spanish Government.

“ FIFTH. - Any Spanish merchant vessel which,  
 “ prior to April 21, 1898, shall have sailed from any  
 “ foreign port bound for any port or place in the  
 “ United States, shall be permitted to enter such port  
 “ or place, and to discharge her cargo, and afterwards  
 “ forthwith to depart without molestation; and any  
 “ such vessel, if met at sea by any United States  
 “ ship, shall be permitted to continue her voyage  
 “ to any port not blockaded.

“ SIXTH. —The right of search is to be exercised  
 “ with strict regard for the rights of neutrals, and

“ the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

“ In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed. Done at the City of Washington on the 26th day of April, 1898, and of the Independence of the United States the one hundred and twenty-second.

“ WILLIAM MCKINLEY.”

*Messages and Papers of the Presidents, Vol. X., pp. 204, 205; 30 Statutes at Large, 1770.*

The claimant of the *Pedro* has assigned the following as the leading errors in the judgment appealed from:

(A.) That the said District Court did not hold that the steamer was privileged and exempt from condemnation under the fourth article or paragraph of the proclamation issued by the President of the United States of America, under date of April 26, 1898.

(B.) That the said District Court did not hold that the steamer was privileged and exempt from condemnation under the fifth article or paragraph of the said proclamation.

(C.) That the said District Court did not hold that the said steamer *Pedro* was privileged and exempt from capture and condemnation as being the property of neutrals.

(D.) That the said District Court did not authorize, allow and order further and additional proofs respecting the matters set forth in the claimant's test affidavit, or in respect of any of the matters therein set forth.

*Assignments of Error, p. 14.*

## POINTS.

### First.

IN CONSIDERING THE CONTENTIONS OF THE CLAIMANT, ESPECIALLY THOSE ARISING UNDER THE PROCLAMATION OF APRIL 26TH, IT IS NECESSARY TO CARRY IN MIND THE HUMANE AND LIBERAL POLICY WHICH HAS GOVERNED THE UNITED STATES IN THE PAST, AND ALSO TO CARRY IN MIND THE PERSONAL VIEWS OF PRESIDENT MCKINLEY.

For more than a century the United States of America have urged upon other nations the adoption of the rule that all private property at sea, whether belonging to neutrals or to enemies, should be free from capture, unless contraband of war, or violating blockade.

In a letter addressed to Benjamin Vaughan under date of March 14th, 1785, Benjamin Franklin said:

"It is time, it is high time, for the sake of  
 "humanity that a stop was put to this enormity.  
 "The United States of America, though better sit-  
 "uated than any European nation to make profit  
 "by privateering, are, as far as in them lies, en-  
 "deavoring to abolish the practice, by offering in  
 "all their treaties with other powers, an article en-  
 "gaging solemnly that in case of future wars no  
 "privateer shall be commissioned on either side,  
 "*and that unarmed merchant ships on both sides*  
 "*shall pursue their voyages unmolested.* This will  
 "be a happy improvement of the law of nations.  
 "The humane and the just cannot but wish gen-  
 "eral success to the proposition."

*Works of Franklin, Vol. 2, pp. 478-485.*

Under the administration of President Monroe, when John Quincy Adams was Secretary of State, the proposition was again put forward in correspondence between the Department of State and the foreign ministers of the United States. Under date of July 28th, 1823, Mr. Adams wrote to Mr. Richard Rush, United States Minister to Great Britain:

"It has been remarked that by the usages of  
 "modern war the private property of an enemy is

“protected from seizure and confiscation as such;  
 “and private war itself has been almost universally  
 “exploded *upon the land*. By an exception, the  
 “reason of which it is not easy to perceive, the pri-  
 “vate property of an enemy *upon the sea* has not  
 “so fully received the benefit of the same principle.  
 “Private war, banished by the tacit and general  
 “consent of nations from their territories, has taken  
 “its last refuge upon the ocean, and there  
 “continued to disgrace and afflict them by a  
 “system of licensed robbery, bearing all the most  
 “atrocious characters of piracy. To a government  
 “intent, from motives of general benevolence and  
 “humanity, upon the final and total suppression of  
 “the slave trade, it cannot be unreasonable to  
 “claim her aid and co-operation to the abolition of  
 “private war upon the sea.

“From the time when the United States took  
 “their place among the nations of the earth this  
 “has been one of their favorite objects.”

5 *American State Papers*, 529.

In the same year, under date of August 13, 1823, Mr. Adams wrote to Mr. Middleton, United States Minister to Russia:

“The principle upon which the Government of  
 “the United States now offers this proposal to the  
 “civilized world is, that the same precepts of jus-  
 “tice, of charity, and of peace, under the influence  
 “of which Christian nations have, by common  
 “consent, exempted private property on shore  
 “from the destruction or depredation of war, re-  
 “quire the same exemption in favor of private  
 “property upon the sea. If there be any objection  
 “to this conclusion, I know not in what it con-  
 “sists; and if any should occur to the Russian  
 “Government, we only wish that it may be made  
 “the subject of amicable discussion.”

Adams to Middleton: *Wharton's International Law Digest*, § 342, p. 261.

On January 5, 1835, Mr. Gallatin wrote to Mr. Everett:

“The British, in the case of war, seize every ves-  
 “sel in their ports belonging to the enemy. With  
 “this single exception, the relic of an age of bar-  
 “barism and piracy and which makes part of the  
 “King's Droits of Admiralty, I am not aware that

“any civilized nation does at this time, even in case of war, seize the property of private individuals which in time of peace has been trusted to the hospitality and good faith of the country.”

*Gallatin's Writings*, 2, p. 476.

A provision has been incorporated from time to time in the treaties negotiated between the United States and certain foreign nations, relieving from capture and seizure, in the event of war, the private property of their respective citizens, excepting contraband of war. The first instance of such a treaty is that between the United States and Prussia, referred to by President Adams in his special message to Congress of March 15, 1826, when he states that the treaty is

“memorable in the diplomatic annals of the world,  
“and precious as a monument of the principles in  
“relation to commerce and maritime warfare, with  
“which our country entered upon her career as a  
“member of the great family of nations.”

Other instances of similar treaty engagements are the treaty with Bolivia in 1858 (*Treaties and Conventions between the United States and other Powers*, 90, 93), and the treaty with Italy in 1871 (*Id.*, 581, 584).

Following the treaty of peace signed at Paris between France and Russia in 1856, the signatories framed a declaration known as the Declaration of Paris, as follows:

- “1. Privateering is and remains abolished.
- “2. The neutral flag covers enemy's goods, with the exception of contraband of war.
- “3. Neutral goods, except contraband of war, are not liable to capture under the enemy's flag.
- “4. Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient in reality to prevent access to the coasts of the enemy.”

The United States, almost alone among the nations of the world, withheld its signature from the Declaration of Paris, not, however, through any disapproval of the principles of the Declaration; but because the Declaration,

while abolishing privateers, did not accord exemption from capture to all private property at sea.

President Pierce, two years before the date of the Declaration of Paris, in his second annual message to Congress, Dec. 4, 1854, had said:

“Should the leading powers of Europe concur in proposing as a rule of international law to exempt private property upon the ocean from seizure by public armed cruisers as well as by privateers, the United States will readily meet them upon that broad ground.”

*Richardson's President's Message, Vol. 5, p. 275.*

In 1856 he made the Declaration of Paris a subject of comment in his fourth annual message to Congress saying:

“I have expressed a readiness on the part of this Government to accede to all of the principles contained in the declaration of the conference of Paris, provided that the one relating to the abandonment of privateering be so amended as to effect the object for which, as is presumed, it was intended—the immunity of private property on the ocean from hostile capture. To effect this object it is proposed to add to the declaration that ‘privateering is and remains abolished’ the following amendment: ‘and the private property of subjects and citizens of a belligerent on the high seas shall be exempt from seizure by the public armed vessels of the other belligerent, except it be contraband.’ This amendment has been presented not only to the powers which have asked our assent to the declaration to abolish privateering, but to all other maritime nations.”

The subject received fresh consideration from our Government on the occasion of the revolt of the Southern States in 1861.

Mr. Seward, the Secretary of State, in addressing the United States Ministers in European countries, April 24, 1861, wrote:

“For your own information it will be sufficient to say that the President adheres to the opinion expressed by my predecessor, Mr. Marcy, that it would be eminently desirable for the good of all



“nations that the property and effects of private individuals not contraband should be exempt from seizure and confiscation by national vessels in maritime war.”

*Wharton's International Law Digest*, § 342, p. 275.

At that time the United States expressed to the European powers its inclination to accept in full the terms of the Declaration of Paris, but Great Britain and France, and perhaps other nations, apprehended that our adhesion at that time might occasion awkward predicaments in view of the naval operations likely to be undertaken by the Southern States.

*Douglas Owen's Declaration of War*, p. 33.

Reservations were therefore suggested, which led to the United States Government abandoning for the time their request to be made parties to the Declaration.

Mr. Seward, then Secretary of State, writing to Mr. Adams, Minister to Great Britain, expressed his regret at the attitude of Great Britain, and further said:

“It is my desire that we may withdraw from the subject carrying away no feelings of passion, prejudice or jealousy, so that in some happier time it may be resumed, and the important objects of the proposed convention may be fully secured. I believe that that propitious time is even now not far distant, and I will hope that when it comes Great Britain will not only willingly and unconditionally accept the adhesion of the United States to all benignant articles of the declaration of the Congress of Paris, but will even go further, and, relinquishing her present objections, as the *United States have so constantly invited, that the private property, not contraband, of citizens and subjects of nations in collision shall be exempted from confiscation equally in warfare waged on land and in warfare waged upon the seas, which are the common highways of all nations.*”

Seward to Adams: *Wharton's International Law Digest*, § 342, pp. 285-286.

While there has not been a permanent acceptance by all nations of the principle that private property at sea

should be exempt from capture, much has been done towards ameliorating the hardships of the original rule which imposes the penalty of capture upon all enemy property at sea.

In the treaty of Aix la Chapelle, between France and Spain on the one side, and England on the other, it was agreed that all prizes taken before the formal declaration of war should be restored.

*Vattel (Chitty & Ingraham's edition), Vol. III., p. 316.*

In 1859, France and Sardinia, in signing a treaty of peace at Zurich, agreed that:

“to diminish the evils of war, and by an exceptional departure from the law generally observed, the captured Austrian vessels which have not yet been condemned as prizes, shall be restored.”

In the Austro-Prussian war of 1866 the principle of inviolability was adhered to by both parties. Germany proclaimed the same principle in 1870.

*Wheaton's Elements of International Law.*

In the earliest days of the Franco-German war of 1870, Baron Gerolt, United States Minister from North Germany to the United States, communicated to the Secretary of State this despatch from Count Bismarck, Chancellor of North Germany:

“BARON GEROLT, Washington.

“For your guidance, private property on high seas will be exempt from seizure by his Majesty's ships, without regard to reciprocity.

BISMARCK.”

Secretary Fish, in acknowledging this letter, made it the subject of congratulation and rejoicing that the “great and enlightened German Government” proposed to adhere to the principle which had been “advocated by this Government whenever opportunity has offered,” adding

“Count Bismarck's despatch communicated in your letter of the 19th instant shows that North

“Germany is willing to recognize this principle  
 “(even without reciprocity) in the war which has  
 “now unhappily broken out between that country  
 “and France. This gives reason to hope that the  
 “Government and people of the United States may  
 “soon be gratified by seeing it universally recog-  
 “nized as another restraining and harmonizing  
 “influence imposed by modern civilization upon  
 “the art of war.”

*Foreign Relations 1876, p. 272.*

Moreover, days of grace to shipping are now almost universally accorded at the opening of hostilities.

“On the outbreak of hostilities the right of cap-  
 “ture at once becomes active, but having regard to  
 “the example in moderation set by the belligerent  
 “powers in recent wars, it is not unreasonable to  
 “suppose the right to capture any enemy vessels  
 “within the dominions on the outbreak of hostili-  
 “ties, will henceforth be postponed. Thus, in the  
 “war with Russia in 1854, six weeks was allowed  
 “for Russian merchant vessels within British terri-  
 “tory to load and proceed; whilst such vessels  
 “which had sailed for British ports prior to the  
 “outbreak were permitted to enter, discharge and  
 “proceed unmolested to any port not blockaded.  
 “And on the occurrence of the Franco-German  
 “war in 1870, thirty days were allowed for German  
 “merchant vessels in French ports, to load or un-  
 “load and depart, whilst those vessels which had  
 “sailed prior to the war with cargoes on French ac-  
 “count were also to be free from capture. To  
 “French vessels in German ports a period of six  
 “weeks was allowed in which the vessels might  
 “load or unload and depart.”

*Douglas Owen's Declaration of War, p. 53.*

“Formerly, on the outbreak of war, no time  
 “was lost in seizing enemy shipping. That it had  
 “entered the national ports in time of peace and  
 “in good faith counted for nothing. Modern usage  
 “tacitly condemns such a breach of the national  
 “good faith, and substitutes for it a certain period  
 “of grace or ‘law,’ during which the enemy’s  
 “merchant vessels may complete the work of dis-  
 “charge or shipment, and proceed in safety to their

"destination. Thus, in 1854 (Crimean war) Russian merchant vessels in our dominions were  
 "allowed six weeks in which to depart. Subsequently, a further thirty days was allowed to  
 "Russian vessels in our Indian or Colonial waters. In 1870 (Franco-German war) thirty days were  
 "allowed to German vessels in French ports, and to French vessels in German ports six weeks.  
 "And in 1897 (Greco-Turkish war) a period of fifteen days was allowed for the clearance of Greek  
 "vessels from Ottoman ports, and of Ottoman vessels from Greek ports. From which it may  
 "be inferred, though perhaps not taken for granted, that in future, on the outbreak of  
 "war, each belligerent will allow ample time for the safe departure of the enemy's shipping at  
 "that time within the national dominions. It was further ordered in 1854, that Russian vessels, on  
 "a voyage to any port in the British dominions, should be permitted to enter, discharge and proceed in safety to any port not blockaded."

*Douglas Owen's Maritime Warfare & Merchant Shipping, p. 5.*

Spain, by her proclamation of April 23d, allowed thirty days grace to merchant ships of the United States, and gave immunity to neutral ships and their cargoes and to neutral merchandise on enemy's ships.

"In 1866 it was agreed between Austria on the one hand, and her adversaries Prussia and Italy on the other, that enemy merchandise and enemy merchant ships should both be exempt from capture on the high seas. And in the war between France and Prussia in 1870, the latter power issued a declaration that all French merchant vessels should be exempt from capture. This decree was, however, subsequently annulled in consequence of France having refused to waive her right of capture of Prussian merchant vessels."

*Douglas Owen's Declaration of War, 35.*

With the full record before him of our own nation's views, and with knowledge of the action taken by other nations in recent wars, President McKinley, in the pream-

ble of his proclamation of April 26th, announced his desire

“ that the war should be conducted upon principles  
 “ in harmony with the present views of nations  
 “ and sanctioned by recent practice.”

*Messages and Papers of the Presidents, Vol.  
 X., p.204; 30 U. S. Statutes at Large, 1770.*

That the President was in full personal accord with the principles for which our government has stood from its beginning, is shown by his second annual message to Congress, dated December 5, 1898, after the close of the war with Spain.

“ The experiences of the last year bring forcibly  
 “ home to us a sense of the burdens and waste of  
 “ war. We desire, in common with most civilized  
 “ nations, to reduce to the lowest possible point the  
 “ damage sustained in time of war by peaceable  
 “ trade and commerce. It is true we may suffer in  
 “ such cases less than other communities, but all  
 “ nations are damaged more or less by the state of  
 “ uneasiness and apprehension into which an out-  
 “ break of hostilities throws the entire commercial  
 “ world. It should be our object, therefore, to  
 “ minimize, so far as practicable, this inevitable  
 “ loss and disturbance. This purpose can prob-  
 “ ably best be accomplished by an international  
 “ agreement to regard all private property at sea  
 “ as exempt from capture or destruction by the  
 “ forces of belligerent powers. The United States  
 “ Government has for many years advocated this  
 “ humane and beneficent principle, and is now in  
 “ position to recommend it to other powers with-  
 “ out the imputation of selfish motives. I there-  
 “ fore suggest for your consideration that the Ex-  
 “ ecutive be authorized to correspond with the  
 “ governments of the principal maritime powers  
 “ with a view of incorporating into the permanent  
 “ law of civilized nations the principle of the ex-  
 “ emption of all private property at sea, not con-  
 “ traband of war, from capture or destruction by  
 “ belligerent powers.”

*Messages and Papers of the Presidents, Vol.  
 X., pp. 191, 192.*

In the same message he referred to a proposition which had been made by the Tsar of Russia, as follows:

“The proposal of the Tsar for a general reduction of the vast military establishments that weigh so heavily upon many people in time of peace was communicated to this Government with an earnest invitation to be represented in the conference which it is contemplated to assemble with a view to discussing the means of accomplishing so desirable a result. His Majesty was at once informed of the cordial sympathy of this Government with the principle involved in his exalted proposal and of the readiness of the United States to take part in the conference. The active military force of the United States, as measured by our population, territorial area, and taxable wealth, is, and under any conceivable prospective conditions must continue to be, in time of peace so conspicuously less than that of the armed powers to whom the Tsar’s appeal is especially addressed that the question can have for us no practical importance save as marking an auspicious step toward the betterment of the condition of the modern peoples, and the cultivation of peace and good-will among them; but in this view it behooves us as a nation to lend countenance and aid to the beneficent project.”

*Messages and Papers of the Presidents, Vol. X., pp. 188, 189.*

In furtherance of the President’s proposition that he be authorized to correspond with the governments of the principal maritime powers with a view of incorporating into the permanent law of civilized nations the principle of exemption of private property at sea, the Committee on Foreign Affairs of the House of Representatives on January 30, 1899, reported favorably this concurrent resolution, which had been originally introduced by Mr. Dingley:

“Whereas, the President of the United States, in his annual message communicated to Congress, December 5, 1898, recommended, amongst other things, that Congress empower him to enter into correspondence with the governments of the principal maritime powers with a view of incorporating into the permanent law of civilized nations



“ the principle of the exemption of all property  
 “ at sea, not contraband of war, from capture or  
 “ destruction by belligerent powers; and

“ Whereas, such recommendation is in accord-  
 “ ance with the policy of the Government of the  
 “ United States in this regard for more than a cen-  
 “ tury, and the present is eminently a fitting and  
 “ opportune time for effecting the exemption of  
 “ non-offending commerce; now therefore be it

“ Resolved, That the recommendations of the  
 “ President in regard to the freedom from capture  
 “ of non offending commerce on the sea during war  
 “ be and hereby are approved and adopted, and that  
 “ the President of the United States and the Secre-  
 “ tary of State thereof be and hereby are authorized  
 “ to enter into correspondence with the governments  
 “ of other nations with a view of obtaining, under  
 “ proper rules and regulations of international law,  
 “ the exemption of all private property at sea from  
 “ capture or destruction by belligerent Powers,  
 “ whether belonging to citizens of neutral or bel-  
 “ ligerent nations, unless contraband or violating  
 “ blockades, and to take measures to carry out these  
 “ resolutions as in their discretion shall be proper.”

*House Report No. 1874, Fifty-fifth Congress,  
 Third Session.*

The same resolution was introduced in the Senate,  
 December 15th, 1898, by Senator Platt of Connecticut.

*Cong. Res., Senate No. 51.*

No final action was taken by Congress upon the resolu-  
 tion, as it was deemed that the Peace Conference which  
 was to assemble at the Hague upon the invitation of the  
 Tsar, and to which the President in due course appointed  
 delegates, would properly consider the subject.

The delegates from the United States attended the  
 Peace Conference under full instructions from our Govern-  
 ment. They formally presented to the Conference June  
 20th, 1899, a printed motion addressed to His Excellency  
 M. De Staal, as President of the Conference, as follows:

“ In accordance with instructions from their  
 “ Government, the Delegation of the United States  
 “ desire to present to the Peace Conference, through  
 “ Your Excellency, as its President, a proposal re-

"garding the immunity from seizure on the high seas in time of war of all private property, except contraband. \* \* \*

"The proposition *which we are instructed to present* may be formulated as follows: \* \* \*

"The private property of all citizens or subjects of the signatory powers, with the exception of contraband of war shall be exempt from capture or seizure on the high seas, or elsewhere, by the armed vessels or by the military forces of any of the said signatory powers. But nothing herein contained shall extend exemption from seizure to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of any of the said powers.' \* \* \*

"The fact that we have received the instructions herein referred to *from the President of the United States* shows that the scope of the conference was believed by our Government to be wide enough to include this question." \* \* \*

"The Delegation of the United States of America respectfully request that the matter be submitted by Your Excellency to the proper Commission or to the Conference itself, that it may be decided whether our proposal is among those which should now be considered.

"ANDREW D. WHITE, President.

"SETH LOW.

"STANFORD NEWELL.

"A. T. MAHAN.

"WILLIAM CROZIER.

"FREDERICK W. HOLLS."

Upon the discussion of the motion the Conference determined that the subject matter was not within the scope of the call issued by the Tsar, and that it could not, therefore, receive consideration, the European delegates being without instructions from their several Governments. It was, therefore, remitted to a future Conference.

We submit that in construing the proclamation of a President who has put himself in line with the foremost reformers for the protection of private property at sea in times of war, the most liberal interpretation which his words will bear should be given to the language used by him.

## Second.

THE PEDRO WAS PRIVILEGED AND EXEMPT FROM CONDEMNATION UNDER THE FOURTH ARTICLE OR PARAGRAPH OF THE PROCLAMATION OF APRIL 26TH, 1898.

The fourth article of the proclamation is:

“FOURTH.—Spanish merchant vessels in any ports or places within the United States shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing herein contained shall apply to the Spanish vessels having on board any officers in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government.”

The *Pedro* had been captured April 22d, and had been libelled in Key West April 23d (*Record*, p. 1) From that time she remained within the harbor of Key West, and was there at the date the proclamation was issued.

She was literally within the terms of the fourth section of the proclamation; and if the proclamation is to be construed literally the proceedings against her should be dismissed.

It was urged by the District Attorney in the Court below that a literal construction of the proclamation should not be adopted, but that the proclamation should, as he urged, be construed “reasonably.” The District Judge thereupon construed it with such effect as to disregard the literal mandates of the instrument, and to hold that it was intended to take effect, not upon such Spanish merchant vessels as were within the territorial jurisdiction of the United States at the time of the promulgation of the proclamation, but only upon such “Spanish merchant

“vessels as were in the harbors of the United States upon  
“April 21, 1898.”

*Opinion, Rec., pp. 25, 29.*

But why should not the President have determined to give general amnesty to such Spanish merchant vessels as had found themselves within the sphere of our naval operations in the earliest days of the war?

They were days of very uncertain complexion. Until Congress declared on April 25th that war had existed since and including April 21st, few would have looked upon that day as a day of war. The correspondence between Cabinet officers and Ministers was not known to the public.

When the *Pedro* left Havana in the afternoon of April 22nd, her master had received no intimation that war existed. An American vessel preceded her to sea by a few hours without hindrance and with the usual permission of the Spanish authorities. Another followed her three hours later (*Test. Afft. 7*). This was before any grace had been granted by Spain, and, when under ordinary rules of war, the vessels would have been restrained if the existence of war had been known to or suspected by the Spanish officials in Havana.

We have a right to expect an act of extreme grace to those merchant vessels who had trusted themselves in the waters adjacent to our country, engaged in peaceful commerce with us, and who were captured without knowledge that war existed.

The proclamation of April 26th clearly was framed upon the basis of the Declaration of Paris and of a certain Order in Council adopted by Great Britain at the outbreak of the Crimean war.

The preamble respecting privateering certainly owes its origin to the Declaration of Paris. Articles one, two and three were taken literally from the Declaration of Paris and exhaust the provisions of the Declaration. Articles four and five are almost as literally taken from the Order in Council referred to, as becomes evident by the following comparison:

“4. Spanish merchant vessels in any ports or places within the United States shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ships, shall be permitted to continue their voyage if on examination of their papers it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any despatch of or to the Spanish Government.

“5. Any Spanish merchant vessel which prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States shall be permitted to enter such port or place and to discharge her cargo, and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.”

*President's Proclamation of April 26, 1898. 30 U. S. Statutes at Large, 1770.*

“Russian merchant vessels in any ports or places within Her Majesty's Dominions shall be allowed until the tenth day of May next, six weeks from the date hereof, for loading their cargoes and departing from such ports or places; and such Russian merchant vessels, if met at sea by any of Her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein contained shall extend or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian Government.

\* \* \* \*

“Any Russian merchant vessel which, prior to the date of this order, shall have sailed from any foreign port bound for any port or place in her Majesty's dominions, shall be permitted to enter such port or place and to discharge her cargo, and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.”

*Order in Council, March 29, 1854. Spinks' Prize Cases,*

War had been declared by Great Britain against Russia on the 29th of March, and the Order in Council was issued on the same day. The full text of the Order appears in the appendix to Spink's Prize Cases, and a copy is annexed to this brief. The Order was issued on the date of the beginning of the war, and allowed "until the tenth day of May next, six weeks from the date hereof," for Russian merchant vessels then in Her Majesty's dominion to depart, and allowed any Russian merchant vessel which "prior to the date of this order" should have sailed from any foreign port bound to Her Majesty's dominions to enter such port and discharge her cargo.

In making his proclamation on April 26th, a date other than that of the beginning of the war, it is apparent that some modification of terms was necessary if it was intended by the President that the fourth article of the proclamation should take effect only as of the first day of the war.

The President, in making provision in the fifth article of his proclamation respecting Spanish merchant vessels bound for a port of the United States, and with an evident desire to make that provision relate back to the beginning of the war, took regard of the situation, and instead of using the provision "prior to the date of this order," which was found in the British Order of Council, stated explicitly "prior to April 21, 1898." This indicates that there was no unthinking adoption of the language of the Order in Council, and significance is to be attached, therefore, to the fact that in defining the privileges of Spanish merchant vessels in "ports or places of the United States" the proclamation did not set a specific limitation in favor of only those in such ports or places on April 21st, but was couched in such language as to take effect upon those vessels which were in such ports or places at the time the proclamation was issued.

Under ordinary rules of construction the proclamation became effective as of the day of its date.

*Lapeyre vs. The United States*, 17 Wallace, 191.

*United States vs. Norton*, 97 U. S., 164.

The President had full authority to release the captured vessels by a special proclamation, or by a general proclamation whose terms should be sufficiently inclusive, even though proceedings had already been instituted against them for condemnation.

No interests other than those of the United States had vested in the vessels. The captors had as yet no legal rights to limit the authority of the Government.

Mr. Justice Nelson, in determining certain appeals taken to the Circuit Court in prize cases, in 1862, said:

"All captures made by public armed vessels belong to the Government. By the laws of Congress, after the condemnation of prize property, a portion of the proceeds is distributed among the officers and crew of the capturing vessel in proportions depending upon the relative forces of that vessel and of the captured vessel. Still the whole property is proceeded against in behalf of the Government. No title exists in the captors except to the distributive share of the proceeds after condemnation; and, until then, the captors have no interest which the Court can notice for any purpose."

*The Aigburth, The Sarah Starr, Blatchford's Prize Cases*, 635, 637.

*Halleck's International Law*, Vol. 2, Sec. 171, p. 365.

*Davis' International Law*, 261.

*Law of Nations, Travers Twiss*, Vol. 2, Sec. 171, p. 339,

"Until the capture becomes invested with the character of prize by a sentence of condemnation, the right of property is in abeyance, or in a state of legal sequestration."

*Boyd's Wheaton's International Law*, Sec. 359a, p. 489.

"Le gouvernement, maître absolu du mode d'exercer le droit de guerre, est maître par cela même de décider que tel navire, bien dans des conditions apparentes qui le désignent comme ennemi, est cependant réellement un navire ami en raison du but ami de son expédition, et que la capture qui en a été faite doit être annulée."



“ The government, absolute master of the mode  
 “ of exercising the law of war, is thereby the master  
 “ to decide that a ship, although apparently under  
 “ conditions which mark her as an enemy, is never-  
 “ theless in reality a friendly vessel by reason of  
 “ the friendly aim of her voyage, and that the  
 “ capture which has been effected must be set aside.”

*Pistoye et Duverdy, Des Prises Maritimes,  
 Tome 1, p. 31.*

### **Third.**

THE PEDRO WAS PRIVILEGED AND EXEMPT FROM CON-  
 DEMNATION UNDER THE FIFTH ARTICLE OR PARAGRAPH OF  
 THE PROCLAMATION OF APRIL 26TH.

The fifth article of the proclamation is:

“ FIFTH. — Any Spanish merchant vessel which,  
 “ prior to April 21, 1898, shall have sailed from any  
 “ foreign port bound for any port or place in the  
 “ United States, shall be permitted to enter such  
 “ port or place and to discharge her cargo, and after-  
 “ wards forthwith to depart without molestation;  
 “ and any such vessel, if met at sea by any United  
 “ States ship, shall be permitted to continue her  
 “ voyage to any port not blockaded ”

It was closely modelled upon Her Majesty's Order in  
 Council of March 29, 1854, which read:

“ Any Russian merchant vessel which prior to  
 “ the date of this order shall have sailed from any  
 “ foreign port bound for any port or place in Her  
 “ Majesty's dominions, shall be permitted to enter  
 “ such port or place, and to discharge her cargo, and  
 “ afterwards forthwith to depart without molesta-  
 “ tion; and any such vessel, if met at sea by any of  
 “ Her Majesty's ships, shall be permitted to con-  
 “ tinue her voyage to any port not blockaded.”

The language of the proclamation is clear, and suffices,  
 whether construed in the letter or in the spirit, to relieve  
 the *Pedro* from condemnation.

The spirit of the rule is apparent. During long years of peace foreign commerce had been invited and encouraged by our country. Spanish merchant vessels under such invitation and encouragement had formed commercial associations with our citizens. They had entered upon lines of trade which brought them to our shores and into our ports. Upon our invitation they left their own waters and the protection of their own Government and freely crossed the ocean and placed themselves within the sphere of our power and within the grasp of our authority.

It would be a direct breach of international good faith to capture and condemn a merchant vessel thus situated.

It was intended by the Proclamation to give to all such vessels at least one chance for safety. If they brought cargo into our country they were to be permitted to free themselves from the embarrassment of their cargo, and go unmolested to any unblockaded port, whether a neutral port or an enemy port. If they were taking cargo, they were to be permitted to complete their loading within reasonable limits of time.

The *Pedro* is a conspicuous example of the class of vessels for which protection was intended.

For nine years she had been documented as a Spanish merchant vessel, authorized to engage in "legitimate commerce."

*Ex. C., p. 49.*

During those nine years she had followed a regular course of trade.

"Her voyages have begun in Europe, where she  
 "has taken such cargo as was procurable for  
 "Cuban ports, from which ports, upon discharge of  
 "such cargo, she has proceeded to ports of the  
 "United States, where she has taken cargo for port  
 "of final destination in Europe, either under charter or on the berth, such cargo from the United  
 "States being the principal cargo of the round  
 "voyage, and the round voyage occupying about  
 "three months, and she making in regular course  
 "about four voyages a year."

*Test. Afft., p. 6.*

Upon the voyage of her capture she took cargo, less than half a full cargo, at Antwerp, for Havana, Santiago and Cienfuegos, and sailed with such cargo on March 25th.

The claimant asserts in his test affidavit that she was at that time bound for Pensacola, Florida, being then under charter to the firm of W. S. Keyser & Company of Pensacola, to take from them a cargo of lumber for Antwerp or Rotterdam. The *bona fides* of the claim does not rest upon the claimant's assertion. It is supported by the ship's documents and by the depositions *in preparatorio*.

When the master gave his testimony before the Prize Commissioners, upon the standing interrogatories, he testifies:

"The last voyage of the vessel began at Antwerp  
"and ended at Pensacola, where we were to take  
"on board a cargo of lumber."

*Dep. in Prep. Ans. to 7th Int. p. 38.*

"The vessel was not under a charter-party for  
"the cargo which was captured, but the vessel  
"was under charter to go to Pensacola for a load  
"of lumber at the time of sailing."

*Dep. in Prep. Ans. to 15th Int., p. 39.*

The chief officer testified:

"She sailed from the port of Antwerp for Pensacola, Florida, via Cuban route."

*Dep. in Prep. Ans. to 7th Int., p. 42.*

"We had a charter-party to go to Pensacola to  
"carry some lumber to Europe. I heard this, but  
"do not know it of my own knowledge."

*Dep. in Prep. Ans. to 15th Int., p. 43.*

A full copy of the charter-party in question is annexed to the claimant's test affidavit (*Exh. A., pp. 44-47*) and the statement is made by the claimant that he produced such copy at the time of his examination *in preparatorio*; though he did not know whether the same had been recorded by the prize commissioners in such depositions.

*Test. Aff., p. 6.*

The charter-party bears date Liverpool, March 18th, 1898, and is made between G. H. Fletcher & Company, on behalf of the *Pedro*, "and W. S. Keyser & Company, merchants, of Pensacola, Florida, Mobile, Alabama, and " Moss Point, Mississippi," who executed the instrument through Crow, Rudolf & Company of Liverpool, as agents.

It described the vessel as at that time " loading in Antwerp for Cuba," and provided that she should with all convenient speed sail and proceed to Pensacola or Ship Island, and there load a full and complete cargo of timber, deals or boards which W. S. Keyser & Company bound themselves to ship.

*Ex. A., pp., 44-47.*

The ship's documents likewise prove the American destination of the steamer.

Among the ship's papers which were seized by the captors at the time of the capture was a bill of health taken out by the master at Antwerp, March 24th, one day before he left that port. It was issued by the Consul of the United States at Antwerp, and describes the vessel as a " vessel engaged in Atlantic trade and plies between " Antwerp, Cuba and the United States."

It then gives the sanitary details of the vessel, her crew and of the port of departure, and closes with the following certificate:

" I certify that the vessel has complied with the  
" rules and regulations made under the act of February 15, 1893, and that the vessel leaves this port  
" bound for Pensacola, in the United States of  
" America, via Havana, Santiago, & Cienfuegos.  
" Given under my hand and seal this 24th day of  
" March, 1898.

" GEO. F. LINCOLN,  
" U. S. Consul."

*Ex. D., pp. 50, 51.*

The certificate of the consul that the vessel is " bound for Pensacola," accords exactly and in terms with the President's description of privileged vessels, as vessels " bound for " a port or place in the United States.

It is certain upon the proofs given *in preparatorio* and found among the ship's documents, and without further proofs, that the vessel was within the provisions of the fifth article of the proclamation.

Moreover, the assertion of the master that the *Pedro's* trade lay, not upon this voyage alone, but regularly, to the United States, is sustained by the ship's documents.

The bill of health describes her as a "vessel engaged in "Atlantic trade, and plies between Antwerp, Cuba, and "the United States."

*Ex. C., p. 51.*

The master, in his test affidavit, asserts that such trade brings her regularly within the United States at intervals of about three months (*Test. Afft., p. 6*).

This statement is supported by the proofs.

Among the ship's papers, sealed by the captors, were certain certificates of the payment of tonnage duty in the United States. Four of these certificates are printed in the record.

*Exhs. E, F, G and H, pp. 52-54.*

Exhibit H shows that the *Pedro* paid \$97.14 at New Orleans March 2, 1897; Exhibit G that she paid \$48.57 at Sabine Pass, Texas, June 5, 1897; Exhibit F that she paid \$97.14 at Galveston, Texas, October 16, 1897; and Exhibit E that she paid \$97.14 at New Orleans, January 28, 1898.

If she had been left to run her course, she would have made another payment and entered upon another year at Pensacola by the end of April, 1898.

Aside from the receipts included in the record there are, among the ship's documents, and now in the possession of this Court, five other certificates of payment of tonnage duty, at various intervals between April 24, 1895, and October 29, 1896, confirming fully the claimant's assertion of the regularity of the steamer's trade with the United States.

Not only was the *Pedro* engaged regularly in trade with the United States, but that trade was the inducing cause which lead her into North American waters.

She was a large steamer of over 2,800 tons gross register. She had a cargo capacity of about 5,000 tons measurement, or of about 4,000 tons dead weight. The cargo which she took on board at Antwerp for Cuba was only 2,000 tons—less than half a cargo—and the entire freight list on such cargo did not exceed \$7,000, which sum the claimant asserts was not more than sufficient to bear the expenses of receiving, transporting and delivering it; and

“ offered no inducement to bring the vessel across  
 “ the Atlantic, the sole inducement being the large  
 “ freight upon the full cargo of lumber to be  
 “ carried under the aforesaid charter party, the  
 “ hire or freight upon which would have been  
 “ about \$25,000.”

*Test. Afft., p. 6.*

The principal venture of the voyage was the cargo to be taken from the United States. Except for that inducement the vessel would not have been found within the sphere of our operations.

Having trusted to our good faith, the steamer is entitled not only to a literal, but also to a reasonable and liberal, construction of the President's proclamation. She had entered Havana on April 17th. She had discharged there four-fifths of her cargo, and on April 20th had taken on a small lot of merchandise from the steamer *Alava*, which had been brought by the *Alava* from European ports and was transshipped for Santiago without being landed at all in Cuba. (*Test. Afft., p. 6.*)

When the *Pedro* left Havana in the afternoon of April 22nd nothing was known of any state of war. Four days later Congress enacted that war had begun on April 21st; but the situation then created was not one known to the public; nor apparently was it known to the executive officers of the Government on that date. The correspondence of Ministers and Secretaries was not public, and the contents of M. Gullon's letter of April 21st to Minister Woodford was a State secret.

At any rate, when the *Pedro* left Havana in the afternoon of April 22nd she was preceded down the harbor by an American steamer which cleared in usual course and

sailed out without hindrance; and later in the day she was followed by another American steamer, the *Saratoga*, of New York, which likewise cleared apparently in regular course, and certainly sailed without hindrance. (*Test. Affl.*, p. 7.)

At that time, if a state of war had been known, these American steamers would not have been permitted to sail by the Spanish authorities; for the days of grace granted by the Queen of Spain were not provided for until her proclamation of April 23 was issued.

Upon the facts, we submit that the *Pedro* was in every sense within the terms of the proclamation giving grace and exemption to Spanish merchant vessels

“ which, prior to April 21, 1898, shall have sailed  
“ from any foreign port bound for any port or  
“ place in the United States.”

The mere circumstance that she had ports of call in Cuba did not divest her of the privileges which belonged to her as a vessel bound from Antwerp to Pensacola.

The doctrine of continuous voyages was practically established by the courts of the United States and was applied conspicuously in this Court in the following cases:

*The Circassian*, 2 Wall., 130,  
*The Bermuda*, 3 Wall., 551,  
*The Stephen Hart*, 3 Wall., 559,  
*The Springbok*, 5 Wall., 1,  
*The Peterhoff*, 5 Wall., 28.

These cases generally related to vessels engaged in the transportation of cargoes (ultimately destined for the Confederates) to Nassau or other neutral port, in contemplation that the cargoes might be forwarded directly or indirectly in the same or other bottoms to final destination.

Most of the vessels were captured between England and the neutral port, and were condemned under the doctrine of continuous voyages. In one case it was said:



“ It is an undoubted and general principle, recognized in this Court in the case of the *Bermuda* and several other cases, that an ulterior destination to a blockaded port will infect the primary voyage to a neutral port with liability for intended violation of blockade.”

*The Peterhoff*, 5 Wall., 28, 54.

We appreciate that in arriving at this doctrine of continuous voyages the Courts have been guided by the acute senses with which persistent and ingenious violators of the law are followed.

But the findings and conclusions of the Court are pertinent to the claimant of the *Pedro*.

There was a case in this Court still earlier than those above cited. The *Joseph*, a vessel of the United States, with full knowledge of the War of 1812, carried a cargo from St. Petersburg to London. She then started in ballast for New York, and, on that stage of her voyage, was captured and was proceeded against upon charges of trading with the enemy.

She pleaded that she had finished the offensive voyage, and asked for the application of the usual rule upon that plea, but Mr. Justice Washington said:

“ It is not denied that if she be taken during the same voyage in which the offense was committed, she is considered as being still *in delicto*, and subject to confiscation; but it is contended that her voyage ended at London, and that she was on her return embarked on a new voyage. This position is directly contrary to the facts of the case. The voyage was an entire one from the United States to England; thence to the north of Europe, and thence, *directly or indirectly*, to the United States. Even admitting that the outward and the homeward voyages could be separated so as to render them two distinct voyages which is not conceded, still *it cannot be denied that the termini of the homeward voyage were St. Petersburg and the United States* \* \* \* It was, in short, a voyage from St. Petersburg to the United States by way of London.”

*The Joseph*, 8 Cranch., 451, 455.

So the *Joseph*, though in ballast bound to her home port, was condemned because the stage from London to New York and the stage from St. Petersburg to London were considered parts of the same voyage.

The rules of this Court respecting continuous voyages are too strongly supported by logic and are framed in language too explicit to become meaningless when invoked by the claimant of the *Pedro*.

It is true that the *Pedro* carried no cargo destined for the United States; but we submit that the argument of the District Judge that she is in any way disentitled to relief because she was coming to the United States only "to take property away" is of no weight (*Opinion*, p. 30). Immunity was not given for any selfish reason but in recognition of our moral obligation to treat fairly those persons with whom we had cultivated commercial intercourse, and who consequently found themselves or their property within the circle of warlike operations.

The further argument of the District Judge that the *Pedro* was in the meantime carrying on commerce between the enemy's ports furnishes no reason to condemn her. That was a mere incident of the trade in which she had for many years engaged, and in respect of which it was designed to give her protection. She offended unwittingly, if at all. If the trade promised to be violative of blockade, she might properly be restrained by notification of the existence of war and of the proclamation of blockade, in substantial accord with the provisions for warning neutral vessels contained in the proclamation of April 22nd. The *Pedro*, as a privileged vessel, was for nonce entitled to be treated as a neutral or a friendly vessel.

The argument of the District Judge that the *Pedro* was engaged in commerce between the enemy's ports is especially inapt, when we consider that the steamer's contemplated ports of call were Cuban ports, and that Congress had enacted on April 20th—a week prior to the capture—that "the people of the island of Cuba are, and by right ought to be, free and independent."

30 U. S. Statute at Large, 739.

If the *Pedro* had been in one of our own ports loading a cargo of provisions for Spain, she would have been permitted, under the terms of the proclamation, to complete such cargo and to proceed with it to her port of destination, enemy port though it might be, provided her cargo was not contraband and that the port was not a blockaded port.

Incidentally the District Judge suggests that the *Pedro* is outside the proclamation because she might be informed of a condition of war before approaching our shores. Even if we admit that the spirit of the proclamation had no broader range than to permit Spanish merchant vessels, bound for our ports, instantly to seek safety in their own waters after knowledge of war, the *Pedro* did not receive even that measure of grace. Her master was absolutely ignorant of any state of war, and the condition of war was not known in Havana, when he sailed from that port April 22d (*Test Afft.*, p. 7). Although Congress, on April 26th, carried the date of the beginning of the war back to April 21st, it cannot, by thus arbitrarily fixing a date in the past, impose obligations upon third parties, or restrict thereby the privileges of such parties. The legislation is in the nature of *ex post facto* law.

The first move in the direction of war was the sailing of Admiral Sampson's fleet from Key West at 6.30 A. M. that same day to undertake the blockade of a portion of the Northern Coast of Cuba (*Report of Sec. of Navy*, Nov. 15th, 1898, accompanying *Prest's Message to Congress*, Dec. 5th, 1898, Vol. II., page 904).

When the *Pedro* was twelve miles from Havana, she met Admiral Sampson's fleet approaching the Cuban coast.

An American vessel cleared at the Custom House and sailed from Havana a few hours earlier than the *Pedro*, and three hours after the *Pedro* sailed, the American steamer *Saratoga* cleared and sailed from Havana without restraint—clear proofs that the condition of war was not known to the officials in Havana, for the proclamation of the Queen Regent giving grace to American vessels in Spanish ports was not issued until April 23d.

An English case is peculiarly applicable, because it arose under the Order of Council of March 29th, 1854, which is in substantially the same phraseology as the Proclamation of April 26th. The *Argo*, a Russian vessel, was captured May 6th, in entering Queenstown Harbor. She pleaded the provisions of the Order in Council. The Order provided in terms exemption to any Russian merchant vessel which, prior to March 29th, should have sailed from any foreign port bound for any port in Her Majesty's dominions. The *Argo* had sailed in ballast from Havana in February, six weeks before the date of the Order, to take a cargo from Matanzas, Cuba. She sailed from Matanzas April 2nd, four days after the date of the Order, bound for Cork for orders. Dr. Lushington, after announcing that "all relaxation of belligerent rights emanating from the Government" should receive 'liberal construction,' said:

"This vessel did sail from the Havannah prior to the date of the Order; she sailed from Matanzas subsequently to the date of the Order. When she left the Havannah she was in ballast bound for Cork, according to the charter party. It has been contended that this Order in Council contemplated that the Russian vessel should have been laden at the date of the Order; but I find no words in the Order that would justify my putting so strict a construction upon it. *Neither do I think that there are any words which impose the necessity of not touching at or taking a cargo at some other port than that where the voyage commenced.* For instance I apprehend that a vessel might have taken in a part of her cargo from one foreign port, having left that port prior to the 29th of March, and taken in another part of the cargo at another foreign port subsequently.

"The real meaning of the Order in Council, according to my view of it, is, that the vessel shall have sailed prior to the 29th of March, on a voyage to end in Great Britain, and I am clearly of opinion that this was one continuous voyage, the commencement of which was at the Havannah, and that the sailing from Havannah prior to March the 29th is a substantial compliance with the terms of the Order."

*The Argo, Spinks's Prize Ct. Cases, 52, 53.*

It cannot be doubted that Dr. Lushington, upon the facts proved in this case, would discharge the *Pedro*, and we submit that the construction given by the English courts to the Order in Council, which formed the basis of the President's proclamation, is entitled to the highest consideration by this Court.

If the *Pedro* had taken any cargo at Antwerp for Pensacola there could be no argument against her right to go free.

If she had completed her Cuban ports, and had been captured while on her way from Cienfuegos to Pensacola, there could be no argument against her right to exemption.

If her ports of call had been in the island of Jamaica instead of in the island of Cuba, the learned District Judge would not have thought of condemning her.

Are the rights of the owners of the steamer to be governed by such trifling accidental facts? Are they not entitled to a construction, in accord with the spirit and the letter of the proclamation, under which the steamer would go free?

#### Fourth.

THE PEDRO WAS EXEMPT FROM CONDEMNATION UPON THE GROUND THAT SHE WAS OWNED BY NEUTRALIS.

The steamer was registered in the name of a Spanish corporation, the *Compania de Navegacion la Flecha*; but the corporation was under the active management of the British firm of G. H. Fletcher & Company, of Liverpool, England (*Test Aff't*, p. 5).

G. H. Fletcher & Company gave possession of the vessel to her master (*Deps. in Prep. Ans. to 4th Int.*, p. 38); effected the charter of the vessel, apparently as owners (*Ex. A*, pp. 44-47), and generally attended to the affairs of the steamer.

It is apparent that the name of the corporation. *Compania de Navegacion la Flecha*, was adopted to identify the steamer with the house of the managers, G. H. Fletcher & Company.

The capital stock of the company was divided into one thousand shares. Two hundred shares stood in the name of William R. P. Jackson, of the firm of G. H. Fletcher & Company, and two hundred shares in the name of Thomas H. Jackson, both of whom were domiciled in England and were British subjects (*Test Afft.*, pp. 5, 6). Two hundred shares stood in the name of Jose Serra y Font; two hundred shares in the name of Raimundo Real de Assua, and two hundred shares in the name of Raimon Real y Assua; all of whom were domiciled in Spain and were citizens of that kingdom.

All the certificates of these shares, however, and it appears by the test affidavit that the possession of the certificate establishes ownership thereof, have, for many years last past, been possessed by Mr. Jackson, who has been, and at the time of capture was, the true and lawful owner of all of the shares for value, and thereby the sole beneficial owner of the steamer (*Test Afft.*, p. 5).

The steamer had, for nine years, been kept under the Spanish flag, as her trade lay regularly in round voyages from Europe to Cuba, the United States, and back to Europe, to avail of the discriminations in favor of vessels carrying the Spanish flag in respect of commerce with the Colonies of Spain, such discrimination being granted in consideration of dues paid by said steamer to the Government of Spain (*Test Afft.*, p. 5).

The steamer had originally been an English steamer, the *Lilburn Tower*, and for six years, from 1883 to 1889, had carried the British flag (*Test Afft.*, p. 5; *Deps. in Prep. Ans. to 7th Int.*, p. 38).

It further appears that the beneficial owner of the steamer contemplated that she should be kept in such trade only so long as it might be lawfully and peacefully carried on, and to withdraw her from the Spanish register and from under the Spanish flag and restore her to the

British registry and British flag, whenever such trade should be disturbed; but that no opportunity therefor was afforded prior to her capture, such capture having taken place prior to any outbreak of hostilities, and before any state of war was known (*Test. Afft.*, pp. 5, 6).

The documents held by the steamer from Spain merely authorized her "to navigate as a merchant vessel according "to established laws" (á navegar y comerciar bajo las reglas establecidas); and pursue her "regular navigation "in legitimate commerce" (regular navegacion y legitimo comercio) "so long as she should carry the Spanish flag, "and should not change her capacity, her build, or her "equipment" (interin este buque se halle bajo el pabellon y no varie de capacidad y figura en el casco y aparejo) (*Exh. C*, pp. 49, 50).

If the facts asserted in the test affidavit are true—and proofs should be allowed in respect of them if they indicate a legal defence—it is submitted that the *Pedro* should be treated as a neutral.

The phrase is common that the character of a ship is to be determined by the flag she carries, but like every phrase, we find upon examination that there are well defined exceptions.

Professor Lawrence, in one of the most recent books upon international law, says:

"A ship with an enemy captain and crew, employed in the trade of the enemy, would be treated as enemy property, even though she belonged to a neutral owner, and the same fate would probably befall a neutral ship habitually sailing under the enemy's flag, or taking a pass or license from the enemy."

*Principles of International Law by Lawrence,*  
Sec. 182, p. 325.

This extract intimates that the *ownership* of a vessel determines whether or not it is neutral, and that the rights of the owner are not effectually determined by the flag which he is carrying.



Moreover, in the courts of our country, especially in the more recent cases, it is found that a controlling feature leading to condemnation is the time and opportunity which the owner has had to make a change of flag and register.

The *Hallie Jackson* was condemned because, not only the vessel in fact "belonged to an enemy," but because the owner's "purpose to navigate her as such in defiance of the laws and Government of the country to which he owed allegiance" was indicated by his setting sail from Savannah "after the well known state of war between the seceding States and the United States was on foot, and the proclamations of April 15, 19, 27, and May 3 had been issued and were personally known to the ship's company and her owner at Savannah" and because he had carried a Confederate flag on the voyage out from Savannah, and in Matanzas whilst lying in that port, and again on the return voyage to the United States.

*The Hallie Jackson, Blatch. Prize Cas., 42.*

This array of facts would scarcely have been recited against the owner if the simple position of the registered ownership in the enemy, or the carrying of the enemy flag, would suffice to condemn the vessel.

The *William Bagaley* was captured July 18, 1863. She had been documented by the Confederate States June 16, 1863, by a register issued at Mobile, and was captured in striving to break the blockade of Savannah. She was owned by Cox, Brainard & Co., of Mobile. One Joshua Bragdon, a loyal citizen of Indiana, claimed a one-sixth share in the vessel through his partnership in that firm. In sustaining the condemnation of the steamer the Court said:

"The omission of the appellant to dispose of his interest in the steamer, and his failure to withdraw his effects from the rebellious State, are at-

“tempted to be explained and justified because the  
 “same were, as alleged in the petition, confiscated  
 “during the rebellion under the authority of the  
 “rebel government. *More than a year, however,*  
 “*elapsed* after the proclamation of the blockade  
 “was issued before any such pretended confiscation.”

*The William Bagaley*, 5 Wall., 377, 408.

Reference was made by the Court to the fact that ships moreover, stand on different footing from other property, and after citing the case of the *Industrie* (cited by Dr. Lushington, 33 Eng. Law & Eq., 572), the Court continued:

“Principle of the decision is that whoever embarks his property in shares of a ship is in general bound by the character of the ship, whatever it may be, and that principle is as applicable to a citizen, after due notice and reasonable opportunity to dispose of his shares, as to a neutral” (p. 410).

Another case is that of a blockade runner which was captured between Mobile and Havana in December, 1863. The owner of the vessel, who had built her in Alabama, claimed her, asserting that he was loyal and was bringing her out of the enemy's country. The Court disposed of the case adversely to the claimant by saying:

“If the allegations of the claimant are true, he postponed his effort to escape too long to derive any benefit from it. The law does not permit such delay.”

*The Gray Jacket*, 5 Wall., 342, 368.

In the French and German war of 1870 *La Palme* was captured January 15, 1871, by the steamer *Bouragne*, and taken into Bordeaux for condemnation.

She was registered in the name of a German citizen, resident in Bremen, and carried the German flag. She was claimed by the Société des Missions de Bâle, Switzerland. The claimant asserted that the vessel had been pur-

chased from Hanoverian owners in 1866, at which time she carried the Hanoverian flag; that the owner was a Swiss corporation; that Switzerland had no maritime flag; that the vessel had therefore continued for a time under the Hanoverian flag, and later had been put under the German flag, the title to the vessel being assigned to the resident agent or representative of the society in Bremen, through whom and in whose name she was documented.

War broke out between Germany and France in July, 1870. The vessel, when captured in January, 1871, was still flying the German flag. She was condemned in the court of original jurisdiction; upon the first appeal the decree of condemnation was revoked; but she was subjected to a fine in the way of *cautionnement* in the amount of 15,000 francs. Upon further appeal to the Conseil d'Etat the proceedings against her were entirely dismissed.

The decision was based upon two grounds:

- (1). That Switzerland had no maritime flag;
- (2). That Switzerland had rendered service to the French army during the war.

The Court held that either ground sufficed to set aside the capture.

*La Palme, Recueil General des Lois & Arrêts,  
Sirey, Devilleneuve & Carotte, 1873, Part  
2, p. 237.*

The editors append this note to the decision:

“NOTE.—Ces résolutions ne sont pas sans précédents. A plusieurs reprises, le gouvernement Français a consenti, soit par des considérations d'équité, soit par des motifs politiques, à se départir du droit qui lui appartient de déclarer de bonne prise la capture de tout bâtiment portant le pavillon ennemi.”

“These conclusions are not without precedent. In many captures the French Government has consented through considerations of equity, or through political reasons, to refrain from the right which belonged to her of declaring good prize every ship carrying the enemy's flag.”

There was no opportunity open to the owner of the *Pedro* to abandon the Spanish flag and register. The steamer was captured April 22d, on the high seas. The capture of the steamer was almost the first overt act of the war; the only earlier act being the capture of the *Buena Ventura* a few hours before.

Although it is now said that the war began on April 21st, that date was established artificially by Act of Congress as the beginning of the war, and not by any act known at the time by the world to constitute an act of war.

### **Fifth.**

WE DO NOT DISPUTE THAT THERE WAS PROBABLE CAUSE FOR THE ORIGINAL CAPTURE, AS THE CAPTURE WAS MADE BEFORE THE DATE OF THE PROCLAMATION.

After the condemnation of the *Pedro*, and pending her appeal to this Court, the Government exercised their statutory right of taking the vessel upon appraisal.

*U. S. Revised Statutes, 4624.*

*Record, pp. 16-19.*

Under those proceedings physical restoration of the steamer to the claimant is impossible, and a decree for the payment of the fund resulting from the condemnation of the steamer is the only relief that can be given.

The costs and expenses since April 26, 1898, the date of the President's proclamation, should not be borne by the claimant.

**Sixth.**

THE DECREE OF THE DISTRICT COURT SHOULD BE REVERSED, AND A MANDATE SHOULD ISSUE DIRECTING THE DISTRICT COURT TO PAY OVER TO THE CLAIMANT THE PROCEEDS OF THE STEAMER, IN THE WAY OF RESTITUTION, AND TO TAKE ALL NECESSARY PROCEEDINGS TO THAT END.

If restitution is based solely upon the alleged neutral ownership of the steamer the Court may desire to have the facts established by further proof.

If restitution is based upon the privileges extended by the President's proclamation of April 26th, we submit that the proofs given *in preparatorio* and those found in the ship's papers are sufficient.

BUTLER, NOTMAN, JOLINE & MYNDERSE,  
*Proctors for the Claimant-Appellant.*

WILHELMUS MYNDERSE,  
*Advocate.*

**APPENDIX.**

AT THE COURT OF BUCKINGHAM PALACE

the 29th day of March, 1854,

Present,

The Queen's most Excellent Majesty in Council.

Her Majesty, being compelled to declare war against his Imperial Majesty the Emperor of all the Russias, and being desirous to lessen as much as possible the evils thereof is pleased by and with the advice of her Privy Council, to order, and it is hereby ordered, that Russian merchant vessels, in any ports or places within her Majesty's dominions shall be allowed until the tenth day of May next, six weeks from the date hereof, for loading their cargoes and departing from such ports or places; and that such Russian merchant vessels, if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear that their cargoes were taken on before the expiration of the above term: Provided, that nothing herein contained shall extend to or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian Government.

And it is hereby further ordered by her Majesty, by and with the advice of her Privy Council as aforesaid, that any Russian merchant vessel which, prior to the date of this order, shall have sailed from any foreign port bound for any port or place in her Majesty's dominions, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and that any such vessel, if met at sea by any of her Majesty's ships shall be permitted to continue her voyage to any port not blockaded.

And the right honourable the Lords Commissioners of her Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports, are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.





No. 115.

Brief of *A. Cammon*  
IN THE  
Supreme Court of the United States.

October Term, 1899.

*Filed Oct. 30, 1899.*

THE STEAMER "PEDRO," SEBASTIAN  
BONNET, CLAIMANT,

APPELLANT,

v.

THE UNITED STATES.

No. 115.

Appeal from the District Court of the United States for  
the Southern District of Florida.

BRIEF FOR THE UNITED STATES AND THE CAPTORS.

JOS. K. McCAMMON,  
JAMES H. HAYDEN,

*Of Counsel for Captors.*

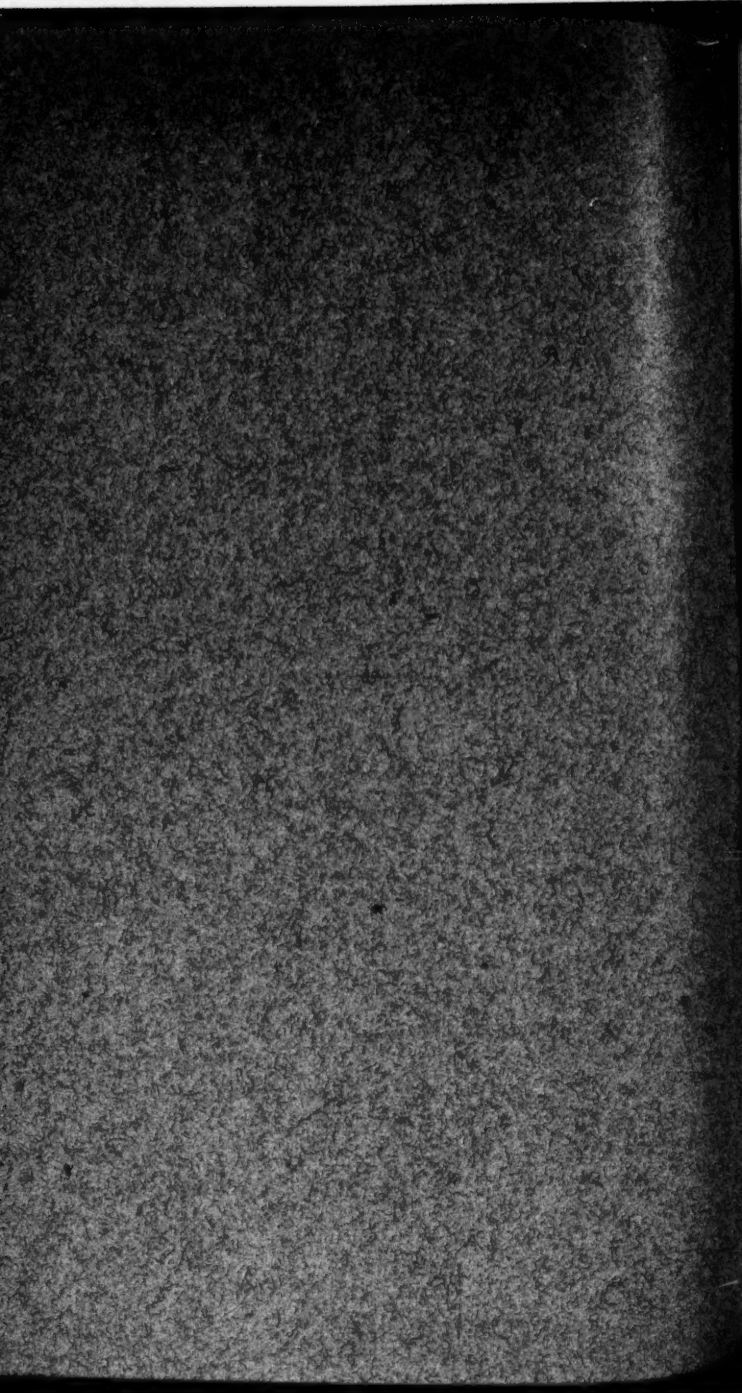
HENRY M. HOYT,

*Assistant Attorney General,  
for the United States.*

WASHINGTON, D. C. :

GIBSON BROS., PRINTERS AND BOOKBINDERS.

1899.



# Supreme Court of the United States.

OCTOBER TERM, 1899.

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THE STEAMER "PEDRO," SEBASTIAN  
BONET, CLAIMANT,  
APPELLANT,

v.

THE UNITED STATES.

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No. 115.

Brief for the United States and the Captors.

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## STATEMENT OF FACTS.

This is an appeal, by the claimant of the Spanish Steamship *Pedro*, from a decree of the District Court of the United States for the Southern District of Florida, by which that vessel was condemned as a prize of war. (Pp. 13-15).

The *Pedro* was built at Newcastle, England, in 1883, and, until 1887, sailed under British registry and the name of *Lilburn Tower*. During the latter year she was conveyed to La Compania La Flecha, a Spanish corporation of Bilbao, Spain, and on October 4, 1887, obtained a royal patent from the Crown of Spain, which was issued to her as the property of the company. From that time

she has sailed under the Spanish flag and been under Spanish management, and been officered and manned by Spaniards. (Pp. 37, 38, 41, 42, 49, 50 .

On March 25, 1898, the *Pedro* sailed from Antwerp, with about two thousand tons of cargo, bound for Havana, Santiago, and Cienfuegos, Cuba. She carried no cargo for any port of the United States. Prior to her departure from Antwerp, she was chartered to proceed to Pensacola and there take a cargo of lumber for Rotterdam or Antwerp. The charter-party described her as "now loading in Antwerp for Cuba." (Pp. 44-47).

She arrived at Havana on April seventeenth and there remained for five days, at first discharging about sixteen hundred tons of her cargo, then taking on some twenty tons of general merchandise for Santiago. The twenty-first of April was fixed upon by act of Congress and by proclamation of the President as the day on which began the war between the United States and Spain. On April twenty-second, the President proclaimed the blockade of many Cuban ports held by Spain, including that of Havana. On April twenty-second the *Pedro* sailed from Havana for Santiago and later in the same day, when about fifteen miles east of the Morro, at the entrance of Havana harbor, and five miles north of the Cuban coast, was captured by the U. S. F. S. *New York*, one of the blockading fleet, and sent to Key West in charge of a prize crew. There the *Pedro* was libeled. In due course proofs *in preparatorio* were taken, which include all of the ship's papers and the depositions of Sebastian Bonet, her master, and Juan Arguelia, her first officer. Thereafter Bonet, as master, appeared in behalf of the owners, and made claim to the vessel. He moved the court for leave to take further proofs presenting with the motion, his test affidavit. (Pp. 4-8, 13.) In this it

was alleged that although a majority of the stock of La Compania La Flecha was registered in the names of Spanish subjects and only a minority in the names of British subjects, the latter had possession of all of the certificates and under the terms of the company's charter were equitably entitled to the whole of the stock. It was further alleged that the *Pedro* was transferred from British to Spanish registry for no purpose other than to get the benefit of certain discriminations made by Spain in favor of Spanish vessels engaged in trade between European ports and Spanish ports of the West Indies, and that it was the intention of the British stockholders to have the *Pedro* reconveyed to them and withdraw her from Spanish registry and restore her to British registry if a state of war should ever render such restoration desirable and expedient. It was also stated that the vessel was insured against all perils and adventures, including the risks of war, by Lloyds of London and other British underwriters, upon whom the loss would fall if she were condemned. The motion was overruled. The cause was heard upon the pleadings and proofs, taken *in preparatorio*, and the decree of condemnation entered. Subsequently the Secretary of the Navy elected to take the vessel for the use of the United States, pursuant to Sec. 4624, R. S. U. S. By order of court she was duly appraised and delivered to the Navy Department, and the amount of her appraised value deposited with the Assistant Treasurer of the United States at New York, subject to the order of the District Court.

On this appeal the claimant presents eight assignments of error. He contends that the *Pedro* was exempt from capture and condemnation, (1) as property owned by neutrals and (2) because of the privileges extended by the 4th, 5th, and other articles of the Proclamation of the

President, issued on April 26, 1898. He further contends that the court erred in denying his motion for leave to take further proofs.

We maintain :—

I. The *Pedro* at the time of her capture was enemy property, engaged in the commerce of the enemy and was liable to capture and condemnation as such. (Errors 1st, 2d, and 3d.)

II. The *Pedro* was not exempt from liability to capture and condemnation by virtue of any provision of the proclamation of the President, issued on April 26, 1898. (Errors 4th, 5th, 6th, and 7th.)

III. The claimant's test affidavit and the proofs in the cause do not set up a fact or create a doubt which would have justified the prize court in allowing the claimant to take further proofs. (Error 8th.)

#### I.

*The Pedro at the time of her capture was enemy property engaged in the commerce of the enemy, and was liable to capture and condemnation as such. (Errors 1st, 2d, and 3d.)*

The claimant argues, that inasmuch as British subjects were the legal owners of some and the equitable owners of the rest of the stock of La Compania La Flecha, and that the *Pedro* was insured against risks of war by British underwriters, she was a neutral ship and not liable to capture and condemnation.

In the case of *The Freundschaft*, 4 Wheat. 105, it appeared that a shipment was made by a firm established in London. Of the three partners, two were British subjects. The third, one Moreira, was domiciled in the Kingdom of Portugal. The United States and Great Britain being at

war, the *Freundschaft* was captured by an American vessel, and she and her cargo were condemned as prize. From this decree, Moreira appealed, claiming that the property, so far as his share was concerned, was neutral and not subject to condemnation. Story, J., delivering the opinion of the court, said :

"It has been long since decided in the Courts of Admiralty that the property of a house of trade established in the enemy's country, is condemnable as prize, whatever may be the domicile of the partners. The trade of such a house is deemed essentially a hostile trade and the property engaged in it is, therefore, treated as enemy's property, notwithstanding the neutral domicile of any of the company. The rule, then, being inflexibly settled, we do not now feel at liberty to depart from it, whatever doubt might have been entertained, if the case were entirely new."

*The Cheshire*, 3 Wall. 231 : "No principle is more firmly settled than that the property of a commercial house, established in the enemy's country, is subject to seizure and condemnation as prize, without regard to the domicile of the partners. The trade of a house of this kind is essentially a hostile trade, and the property employed in its prosecution is therefore treated as enemy's property, though some of the partners may have a neutral domicile. Such trade tends directly to add to the resources and revenues of the enemy; and, as observed by Mr. Justice Story, 'There is no reason why he who thus enjoys the protection and benefits of the enemy's country, should not, in reference to such a trade, share its dangers and losses.' It would be too much to hold him entitled by a mere neutral residence, to carry on a substantially hostile commerce and at the same time possess all the advantages of a neutral character."

*The Frances*, 8 Cranch, 335.

*Story's Principles and Practice of Prize Courts*, pp. 60-66.



If this rule has been applied to cases which involve the undivided interest of a neutral in property, owned by him in common with citizens of the enemy's country, no other can be applied in a case like the one at bar. Here the alleged holders of neutral interests had no title to the vessel, legal or equitable. She was owned absolutely by a corporation, incorporated under the laws of Spain, with its principal place of business in Spain; she was sailing under the Spanish flag and a Spanish license, and she was officered and manned by Spaniards. She was in every sense a Spanish vessel.

In a treatise upon International Law, by W. E. Hall, it is said (p. 524):

"Property not impressed with a belligerent character by its origin and belonging to a neutral, becomes identified with a belligerent by being subject wholly to his control or being incorporated into his commerce. Thus a vessel owned by a neutral, but manned by a belligerent crew, commanded by a belligerent captain, and employed in the trade of a belligerent State, is deemed to be a vessel of the country from which she navigates, and the acceptance of a pass or license from a belligerent State or of sailing under its flag, entails the same consequence."

In several decisions of this court it has been held that the mere act of sailing under a license granted by a belligerent state is sufficient to condemn a vessel without regard to the object of her voyage or the port of her destination.

*The Ariadne*, 2 Wheat. 143, 147-148.

*The Hiram*, 1 Wheat. 440, 447.

*The Aurora*, 8 Cranch, 203.

*The Julia*, Id. 181.

It is entirely immaterial whether any or all of the stock of La Compania La Flecha was owned by neutrals. The British subjects, formerly the owners of the *Pedro*, renounced her rights as a British vessel when they conveyed her to the Spanish corporation. That the transfer was made for commercial reasons does not alter the case. Spanish registry is only given to Spanish ships. The former owners cannot deny that, when they elected to take the benefit of Spanish navigation laws, and the commercial profits to be had through the discrimination of those laws against ships of other nations, they also elected to rely upon the protection afforded by the Spanish flag.

The alleged intention of the British stockholders to restore the *Pedro* to British registry, if Spanish wars rendered the change desirable, cannot be seriously considered. The restoration had not been effected when the *Pedro* was captured, and it could not be made afterward. It is not expected that the shipping of the world will shift about from one allegiance to another, to suit temporary conditions of war and trade.

## II.

*The Pedro was not exempt from liability to capture and condemnation by virtue of any provision of the proclamation of the President, issued on April 26, 1898. (Errors 4th, 5th, 6th, and 7th.)*

The appellant contends that the *Pedro* was not liable to capture and condemnation because war between the United States and Spain had not been formally declared prior to the time of her capture.

It is a fact, shown by the claimant in his brief on appeal (p. 6), that Spain regarded and treated the joint

resolution of Congress, approved on April 20, 1898, whereby the freedom and independence of the people of Cuba was recognized, as "equivalent to an evident declaration of war."

Under an established rule of international law, a formal declaration is not essential to the existence of a state of war, and all enemy property found on the high seas at the actual outbreak of war is the legitimate subject of prize.

*The Eliza Ann*, 1 *Dod*. 247.

The *Pedro* had lain in the harbor of Havana from the 17th until the 22d of April. She had seen American vessels, citizens, and officials departing. She must have been advised of the strained relations between the United States and Spain. She did not leave Havana till the day after that named by Congress and the President as the day on which war actually began. The President's proclamation declaring the blockade of Havana was issued on April 22d. The United States fleet was already off the harbor, almost within range of the Morro's guns. The capture was made only fifteen miles to the eastward of the harbor and five miles from the Cuban coast. If it were material, it would be folly to suggest that the *Pedro* had no adequate warning of the risk that she ran in putting to sea.

The *Pedro's* case did not come within the scope of the immunity granted by the fourth article of the proclamation. It provided :

"Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places ; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that

their cargoes were taken on board before the expiration of the above terms ; provided, that nothing herein contained shall apply to Spanish vessels having on board any officers in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government."

The proclamation gave immunity from capture in cases where capture would have been proper under the rules of international law. It must be construed strictly. It was not intended to grant privileges other than those specifically set forth, or following these as a necessary consequence. The letter of the proclamation, specifically limiting its scope, is not to be disregarded in favor of a mere supposition as to what is the tendency of civilization and what should have been the policy of the United States.

*The Phœnix, Spink's Prize Cases.*

*Hannibal & S. L. R. Co. v. Missouri R. Co.*, 125 U. S. 260.

*St. Paul, M. & R. Co. v. Phelps*, 137 U. S. 528.

On April 21st the *Pedro* was not "in any port or place within the United States," but in Havana, a port of the enemy. The proclamation extended protection to Spanish vessels then in one of our ports, upon whom the war came unawares while they were directly within the power of the United States. It was not intended to include all Spanish vessels which might put to sea prior to May 21.

The claimant argues that inasmuch as the *Pedro*, after her capture, was taken to Key West and there libeled on April 23d, she was then in a port of the United States and under the terms of the proclamation was entitled to depart without hindrance. We submit that when she reached Key West she was not a Spanish merchant vessel, but a prize of war.

Although condemnation had not been decreed, the rights of the United States and the captors had existed, though inchoate, from the time of capture. (The *Mary & Susan*, 1 Wheaton, 46, 58.) Besides, as we have noted, the *Pedro* was not in the port of Key West on April 21st.

The fifth article of the proclamation provided :

"Fifth. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States shall be permitted to enter such port or place and to discharge her cargo and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded."

The act of Congress, approved on April 25th, and the proclamation of the 26th, are explicit in fixing April 21st as the date upon which war began. The proclamation is explicit in fixing April 21st as the last day whereon a vessel might have sailed from a foreign port bound for one of the United States, and yet be exempt from capture and condemnation. It was not intended to protect Spanish vessels except such as might be proceeding to the United States to deliver cargoes.

There seem to be two reasons for the granting of this exemption :

First. A Spanish vessel might have left a distant port without any knowledge that the relations of the two nations, long strained to the breaking point, had developed into war. Such a vessel, bound direct for one of our ports, having no intermediate port of call would not be likely to gain information of the outside world until a shot across her bows informed her that she was a prize. This would be a harsh experience, and one which the more humane methods of modern warfare aim to prevent.

Second. It is desirable, as a matter of policy, that at the outbreak of war a nation be supplied with foreign goods. Hence, that the vessels of another nation with which war is likely to ensue should not be deterred from coming here upon the first, perhaps unfounded, rumors of approaching hostilities. It was desirable that the cargoes of Spanish vessels, in many instances containing goods ordered or even bought by citizens of the United States, should be allowed to enter.

Neither the immunity granted by the fifth article of the proclamation, nor any implication properly derived from it, can include the case of the *Pedro*. She never contemplated a continuous voyage from a foreign port to a port of the United States. In her charter-party, dated March 18, 1898, her agents, Fletcher & Co., stated that she was then "loading in Antwerp for Cuba" (p. 44). She intended to proceed to Pensacola, only after discharging at Cuban ports such cargo as she brought from abroad and such as she might get at Havana and elsewhere. Had it been her main object to proceed to the United States, she could have discharged her cargo at Havana and cleared for Pensacola prior to April 21st, and might even have reached Pensacola on that day. Had she done so there might have been a plausible ground for claiming the protection extended by the proclamation, but she did otherwise. After unlading part of her original cargo at Havana, the *Pedro* remained, taking on more, all of which was shipped for Santiago and other Cuban ports held by the Spanish forces. Not until April 22d, after the war had actually begun and the period of exemption had ceased and the blockade of Havana had been proclaimed and established, did she put to sea. Even then she did not clear for Pensacola, but for Santiago. From the consignments of her cargo, it is evident that she would

have proceeded from Santiago to Cienfuegos. She was actually engaged in trading between ports of the enemy. Had she reached Santiago or Cienfuegos, there can be little doubt that her outward voyage would have terminated then and there, for even if she had been willing to take the risk of proceeding to Pensacola, the Spanish authorities would not have allowed it.

The claimant, invoking the doctrine of continuous voyages, contends that, when captured, the *Pedro* had for her ulterior destination the port of Pensacola, Florida; hence that she was entitled to immunity from capture under the fifth paragraph of the proclamation. He argues that the taking on of cargo at Havana and the calls to be made for the purpose of discharging it at Santiago and Cienfuegos were mere incidents of the voyage. If the doctrine of continuous voyages laid down by the authorities cited in the appellant's brief (pp. 34-36) were applicable in this case, it would lead to the conclusion that the *Pedro* was bound from Antwerp to Rotterdam by way of Cuba and the United States; that is to say, from one foreign port to another. Under such circumstances, she could claim no immunity. But the facts before us are very different from those presented in the cases cited. The *Pedro* was not obligated to reach Pensacola at any definite time. The discharge of part of her cargo at Havana was the first business in hand. Her charter did not interfere in the least with her seeking other business, and it cannot be doubted that she would have accepted more had it been offered. The outbound voyage with cargo to Cuba was wholly distinct from what was to follow. It was to terminate with the last discharge of cargo at a Cuban port. Then the character of her business was to change, and she was to begin a new voyage under an express agreement. If the position were tenable that the *Pedro's* voyage to



Cuba was merely a stage in a continuous voyage with a terminus in the United States, it would follow that any enemy vessel which happened to have sailed from a foreign port prior to April 21st could have continued indefinitely trading between ports of the enemy, and if seized at any time by a United States vessel, could have cleared herself by declaring that her ulterior destination was a port of the United States.

### III.

*The claimant's test affidavit and the proofs in the cause do not set up a fact or create a doubt which would have justified the Court below in allowing the claimant to take further proofs. (Error 8th.)*

The depositions of the claimant, the master, and that of the first officer of the *Pedro*, taken in *preparatorio*, clearly establish all facts in the case, which are material, and, as we have seen, these furnish abundant support for the decree of condemnation. The rule with regard to the ordering of further proofs is stated in *Benedict's Admiralty*, Sec. 612:

"These [ship's] papers and examinations in *preparatorio* constitute the only evidence on which the cause is first heard. If, on this evidence, there be doubt or justice require it, the court may, in its discretion, order further proof."

This gives the captured vessel the great advantage of having her cause adjudicated, wholly, upon the evidence of those whose interests are hers.

In the case of the *Amiable Isabella*, 6 Wheat. 1, 77, it was said by Story, J.:

"It is to be recollected that, by the settled rule of prize courts, the *onus probandi* of a neutral interest rests on the claimant. This rule is tempered by another whose liberality will not be denied—that the evidence to acquit or condemn shall, in the first instance, come from the ship's papers and persons on board, and, where these are not satisfactory, if the claimant has not violated good faith, he shall be admitted to maintain his claim by further proof, but if, in the event, after full time and opportunity to adduce proofs, the claim is still left in uncertainty and the neutrality of the property is not established beyond reasonable doubt, it is the invariable rule of prize courts to reject the claim and decree condemnation of the property."

*Story, Principles & Practice in Prize Courts*, pp. 9, 18, 24. "There can be no honest reason why the whole truth should not be told by the captured persons on the first examination. \* \* \* Where the justice of the case requires the admission of new evidence, that may always be obtained. \* \* \* But further proof is in no case a matter of right, and rests in the sound discretion of the court." "It is never ordered unless cause appears on the original papers and the answers to standing interrogatories."

*Pizarro*, 2 *Wheat.* 240. "Nor should the captured crew have been permitted to be re-examined in court. They are bound to declare the whole truth upon their first examination, and if they then fraudulently suppress any material facts they ought not to be indulged with any opportunity to disclose what they please, or to give color to their former statements after counsel has been taken, and they know the pressure of the cause. Public policy and justice equally point out the necessity of an inflexible adherence to this rule."

*The Grey Jacket*, 5 *Wall.*, 342, 368.

*The Euphrates*, 8 *Cranch*, 385.

*The Hazard*, 9 *Cranch*, 205.

The recitals of the test affidavit, to the effect that, through ownership of or liens upon the stock of La Compañia La Flecha, British subjects would be concerned in the condemnation of the *Pedro*, and that the loss of the vessel would eventually be borne by British underwriters, are entirely immaterial and do not tend to prove that she was the property of neutrals. The royal patent from the Crown of Spain under which she was sailing, and the depositions of her master and first officer, prove her Spanish ownership conclusively. The claimant could not overcome this proof even if he were to contradict his sworn statement, and the burden of proving a neutral character rested upon the claimant.

*The Jenny*, 5 Wall. 183, 188.

*The Amiable Isabella*, 6 Wheat. 1, 78.

The proof is equally clear in showing that when captured the *Pedro* was actually engaged in trading between ports of the enemy—and was not entitled to any exemption granted by the President's proclamation. No further proof offered could disturb these facts. It would not have been proper to grant the motion.

We submit that the decree should be affirmed.

JOSEPH K. McCAMMON,

JAMES H. HAYDEN,

*of Counsel for Captors.*

HENRY M. HOYT,

*Assistant Attorney-General,*

*for the United States.*

## THE PEDRO.

### APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 115. Argued November 2, 3, 1899. — Decided December 11, 1899.

On the 20th of April, 1898, a joint resolution of Congress was approved by the President declaring that the people of Cuba are, and of right ought to be, free and independent. On the same day the Minister of Spain at Washington demanded his passport, and the diplomatic relations of Spain with the United States were terminated. On the 22d of the same April a blockade of a part of the coast of Cuba was instituted. On the 23d of the same month, in a proclamation of the Queen Regent of Spain it was declared that a state of war was existing between Spain and the United States. On the 26th of the same month the President issued a proclamation, declaring that a state of war existed between the United States and Spain, the fourth and fifth articles of which proclamation were as follows: "4. Spanish merchant vessels in any ports or places within the United States shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing herein contained shall apply to the Spanish vessels having on board any officers in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government." "5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place and to discharge her cargo, and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voy-

## Statement of the Case.

age to any port not blockaded." The Pedro was built in England, sailed under the British flag till 1887, and then was transferred to a Spanish corporation, and sailed under the Spanish flag. Sailing from Antwerp she arrived at Havana with a cargo April 17, 1898. She remained there five days, discharged her cargo and left for Santiago April 22. At 6 o'clock on that evening, when about 15 miles east of the Morro, and 5 miles north of the Cuban coast, she was captured by the New York, of the blockading fleet, sent to Key West, and there libelled and condemned.

*Held,*

- (1) That the language of the proclamation was plain, and not open to interpretation;
- (2) That the Pedro did not come within Article 4 of the proclamation; nor within Article 5; nor within the reasons usually assigned for exemption from capture;
- (3) That it must be assumed that she was advised of the strained relations between the United States and Spain;
- (4) That being owned by a Spanish corporation, having a Spanish registry, and sailing under a Spanish flag and a Spanish license, and being officered and manned by Spaniards, she must be deemed to be a Spanish ship, although she was insured against risks of war by British underwriters — that fact being immaterial.

THIS was an appeal from a decree of the District Court of the United States for the Southern District of Florida condemning the steamer Pedro as lawful prize of war on a libel filed April 23, 1898.

April 20, 1898, the President approved the following joint resolution:

"First. That the people of the Island of Cuba are, and of right ought to be, free and independent.

"Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

"Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

"Fourth. That the United States hereby disclaims any dis-

## Statement of the Case.

position or intention to exercise sovereignty, jurisdiction or control over said Island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the Island to its people." 30 Stat. 738.

On the same day, the Minister of Spain to the United States requested and obtained his passports; the text of the resolution was cabled to the Minister of the United States at Madrid; and the Secretary of State by separate dispatch directed him to communicate the resolution to the Government of Spain with the formal demand of the United States therein made, and the notification that, in the absence of a response by April 23, the President would proceed without further notice to use the power and authority enjoined and conferred upon him.

April 21, the Minister of the United States at Madrid acknowledged the receipt of the Secretary's dispatch that morning, but saying that before he had communicated it he had been notified by the Minister of Foreign Affairs of Spain that diplomatic relations were broken off between the two countries, and that he had accordingly asked for his passports. The letter from the Minister of Foreign Affairs of Spain referred to was as follows:

"In compliance with a painful duty I have the honor to inform Your Excellency that the President having approved a resolution of both Chambers of the United States, which in denying the legitimate sovereignty of Spain and threatening an immediate armed intervention in Cuba, is equivalent to an evident declaration of war, the Government of His Majesty has ordered its Minister in Washington to withdraw without loss of time from the North American territory, with all the personnel of the Legation. By this act the diplomatic relations which previously existed between the two countries are broken off, all official communications between their respective representatives ceasing, and I hasten to communicate this to Your Excellency in order that on your part you may make such dispositions as seem suitable. I beg Your Excellency to acknowledge the receipt of this note at such time as you deem

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proper, and I avail myself of this opportunity to reiterate to you the assurances of my distinguished consideration."

The Secretary of the Navy at once gave instructions to the commander in chief of the North Atlantic Squadron to "immediately institute a blockade of the North coast of Cuba, extending from Cardenas on the east to Bahia Honda on the west; also, if in your opinion your force warrants, the port of Cienfuegos, on the south side of the island. . . . It is believed that this blockade will cut off Havana almost entirely from receiving supplies from the outside. . . . The Department does not wish the defences of Havana to be bombarded or attacked by your squadron."

April 22, Admiral Sampson, in command, instituted the blockade and on that day the President issued the following proclamation:

"Whereas, by a joint resolution passed by the Congress and approved April 20, 1898, and communicated to the Government of Spain, it was demanded that said Government at once relinquish its authority and government in the Island of Cuba, and withdraw its land and naval forces from Cuba and Cuban waters; and the President of the United States was directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States to such extent as might be necessary to carry said resolution into effect; and

"Whereas, in carrying into effect said resolution, the President of the United States deems it necessary to set on foot and maintain a blockade of the North coast of Cuba, including all ports on said coast between Cardenas and Bahia Honda and the port of Cienfuegos on the South coast of Cuba:

"Now, therefore, I, William McKinley, President of the United States, in order to enforce the said resolution, do hereby declare and proclaim that the United States of America have instituted, and will maintain a blockade of the North coast of Cuba, including ports on said coast between Cardenas and Bahia Honda and the port of Cienfuegos on the



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South coast of Cuba, aforesaid, in pursuance of the laws of the United States and the law of nations applicable to such cases. An efficient force will be posted so as to prevent the entrance and exit of vessels from the ports aforesaid. Any neutral vessel approaching any of said ports, or attempting to leave the same, without notice or knowledge of the establishment of such blockade, will be duly warned by the Commander of the blockading forces, who will indorse on her register the fact, and the date, of such warning, where such indorsement was made; and if the same vessel shall again attempt to enter any blockaded port, she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as prize, as may be deemed advisable.

"Neutral vessels lying in any of said ports at the time of the establishment of such blockade will be allowed thirty days to issue therefrom." 30 Stat. 1769.

April 23 the Queen Regent of Spain issued a decree, in which, among other things, it was stated:

"Article I. The state of war existing between Spain and the United States terminates the treaty of peace and friendship of the 27th October, 1795, the protocol of the 12th January, 1877, and all other agreements, compacts and conventions that have been in force up to the present between the two countries.

"Art. II. A term of five days from the date of the publication of the present royal decree in the Madrid Gazette is allowed to all United States ships anchored in Spanish ports, during which they are at liberty to depart."

April 25, in response to a message from the President, Congress passed the following act, which was thereupon duly and at once approved:

"First. That war be, and the same is hereby, declared to exist, and that war has existed since the twenty-first day of April, Anno Domini eighteen hundred and ninety-eight, including said day, between the United States of America and the Kingdom of Spain.

"Second. That the President of the United States be, and

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he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry this act into effect." 30 Stat. 364.

April 26 the President issued a further proclamation, as follows:

"Whereas, By an act of Congress, approved April 25, 1898, it is declared that war exists, and that war has existed since the 21st day of April, A.D. 1898, including said day, between the United States of America and the Kingdom of Spain; and

"Whereas, It being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris:

"Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

"1. The neutral flag covers enemy's goods, with the exception of contraband of war.

"2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

"3. Blockades in order to be binding must be effective.

"4. Spanish merchant vessels, in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea, by any United States ship, shall be permitted to continue their voyage, if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for the voyage), or any other article

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prohibited or contraband of war, or any dispatch of or to the Spanish Government.

"5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

"6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade." 30 Stat. 1770.

The steamship *Pedro* was built at Newcastle, England, in 1883, and, until 1887, sailed under British registry and the name of *Lilburn Tower*. In the latter year her name was changed to *The Pedro*, and she was transferred to *La Compañía La Flecha*, a Spanish corporation of Bilbao, Spain, and registered at that port in its name, and on October 4, 1887, obtained a royal patent from the Crown of Spain, which was issued to her as the property of the company. Thereafter she sailed under the Spanish flag and was officered and manned by Spaniards, though she was engaged in the transportation of cargo for hire as a merchant vessel under the management of G. H. Fletcher and Company of Liverpool. Her voyages began in Europe where she took cargo for Cuban ports, from which ports on discharge she proceeded to ports of the United States, where she took cargo for a port of discharge in Europe, the round trip occupying about three months. Between March 20 and March 25, 1898, she took on board at Antwerp, Belgium, some 2000 tons of cargo for Havana, Santiago de Cuba, and Cienfuegos, Cuba, of which 1700 tons was rice and the rest, hardware, empty bottles, paper, cement and general cargo.

On March 18, 1898, she was chartered to the firm of Keyser and Company, being described in the charter party as "now loading in Antwerp for Cuba," to proceed to Pensacola, Flor-

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ida, or Ship Island, Mississippi, "with all convenient speed," to load a cargo of lumber for Rotterdam or Antwerp. The charter party provided that "should the vessel not be in all respects ready for cargo at her loading place on or before the 18th of May, 1898, charterers or their agents have the option of cancelling this charter. If required by charterers, lay days are not to commence at loading port before the 5th of May, 1898." Among the ship's papers was a bill of health issued by the consul of the United States at Antwerp, March 24, which described her as "engaged in Atlantic trade, and plies between Antwerp, Cuba and the United States." The bill of health concluded as follows: "I certify that the vessel has complied with the rules and regulations made under the act of February 15, 1893, and that the vessel leaves this port bound for Pensacola, in the United States of America, via Havana, Santiago & Cienfuegos." The steamer's freight list on the voyage to Cuban ports was valued at about \$7000, stated to be barely sufficient to cover the expenses of receiving, transporting and delivering that cargo, and the charter hire on the contemplated voyage from Pensacola or Ship Island to Rotterdam would have been about \$25,000.

The steamer arrived at Havana on April 17, and remained there for five days, discharging about sixteen hundred tons of her cargo, and taking on some twenty tons of general merchandise for Santiago. On April 22, at about half after three o'clock in the afternoon, she left Havana for Santiago, and at six o'clock, when about fifteen miles east of the Morro, at the entrance of Havana harbor, and five miles north of the Cuban coast, was captured by the cruiser New York, one of the blockading fleet, and sent to Key West in charge of a prize crew. There she was libelled on April 23.

In due course, proofs *in preparatorio*, which embraced the ship's papers and the depositions of her master and first officer, were taken. The master appeared in behalf of the owners and made claim to the vessel, and moved the court for leave to take further proofs, presenting with the motion his test affidavit. In the affidavit it was alleged that, although a majority of the stock of La Compañia La Flecha was registered in

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the names of Spanish subjects and only a minority in the names of British subjects, (members of the firm of G. H. Fletcher and Company,) one of the latter had possession of all the certificates of stock, which under the charter of the company established the ownership thereof, whereby he was the "sole beneficial owner of the said steamer Pedro." And further that the steamer was transferred from the British to the Spanish registry solely for commercial reasons, "there being discriminations in favor of vessels carrying the Spanish flag in respect of commerce with the colonies of Spain, in consideration of dues paid by such steamers to the government of Spain," but that it was the intention of the British stockholders to withdraw her from the Spanish registry and from under the Spanish flag, and restore her to the British registry and the flag of Great Britain whenever the trade might be disturbed. It was also alleged that the steamer was insured "against all perils and adventures, including the risks of war, for her full value by underwriters of Lloyds, London, and by insurance companies organized and existing under and pursuant to the laws of Great Britain, and that if the said vessel should be condemned as prize by this court the loss will rest upon and be borne by the said English underwriters."

The motion was denied, the cause heard on the pleadings and the proofs taken *in preparatorio*, and a decree of condemnation entered. Subsequently the Secretary of the Navy elected to take the vessel for the use of the United States pursuant to section 4624 of the Revised Statutes. By order of court she was duly appraised and delivered to the Navy Department, and the amount of her appraised value deposited with the Assistant Treasurer of the United States at New York, subject to the order of the District Court. From the decree of condemnation an appeal was prosecuted to this court.

*Mr. Wilhelmus Mynderse* for Bonet, claimant, appellant.

*Mr. James H. Hayden* for captors. *Mr. Joseph K. McCammon* was on his brief.

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*Mr. Assistant Attorney General Hoyt* filed a brief for the United States.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

When, on the twenty-second day of April, this Spanish steamer sailed from Havana, the United States and Spain were at war. Congress had adopted a resolution, April 20, demanding "that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters," and directing and empowering the President "to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect." Time was given by the Executive until April 23 for Spain to signify compliance with the demand, but the Spanish Government at once, on April 21, recognized the resolution as "an evident declaration of war," and diplomatic relations were broken off. Blockade had been proclaimed April 22, and put into effective operation at Havana, and, immediately thereupon, elsewhere, under the proclamation. And by the act of Congress of April 25, it was declared that war had existed since the twenty-first day of April.

Being an enemy's vessel, the *Pedro* was liable to capture as lawful prize unless exempted therefrom by the terms of the proclamation of April 26. If that document in its bearing on this case could be regarded as ambiguous, a liberal construction might be indulged in, and it is urged that such liberality should in any event be accorded in view of the traditional policy of this Government in respect of the exemption of private property at sea during war.

In *The Phœnix*, 1 Spinks Eccl. & Adm. Rep. 306, 310; Spinks' Prize Cases, 1, 6, Dr. Lushington said in reference to the relaxation of belligerent rights by official action: "If the words of the document are capable of two constructions, then

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I am clearly of opinion that the one most favorable to the belligerent party, in whose favor the document is issued, ought to be adopted; but the court must bear in mind that its province is not *jus dare*, but *jus dicere*; and I must again refer to the principle which I have often enunciated in this court, *verbis plane expressis omnino standum est.*"

As applicable here, the meaning of the language used appears to us plain, and the proclamation not open to interpretation, since none is needed; nor are we justified in expanding executive action by construction because of the diplomatic attitude of this Government in respect of the exemption of all property, not contraband, of citizens and subjects of nations at war with each other, an exemption which has not as yet been adopted into the law of nations.

It may be that the hardships incident to the contrary view will finally be found so destitute of corresponding advantage as to lead to the general acceptance of the doctrine so long unsuccessfully advocated by our statesmen and publicists, in diminution of the evils of war, but we must apply the law as it is, and not the law as they have contended it should be.

The *Pedro* did not come within the fourth article of the proclamation, for she was in Havana, a port of the enemy, on April 21, and not "in any port or place within the United States." She sailed from Havana for Santiago, another port of the enemy, on April 22, was captured that day, and reached Key West on April 23 as a prize of war. The suggestion that she was thus brought within the exemption requires no remark.

Nor did the fifth article of the proclamation exempt the *Pedro*. That article provided that "any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place and to discharge her cargo, and afterwards forthwith to depart without molestation."

The *Pedro* remained in the harbor of Havana from the 17th until the 22d of April. We think it must be assumed that she was advised of the strained relations between the United States and Spain, and the imminency of hostilities. At all events,



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she did not leave Havana until the day after that designated by Congress and the President as the day on which war actually began, and which was also so regarded by the Government of Spain. She had no cargo to be discharged at any port or place in the United States, but had cargo for Santiago and Cienfuegos, Cuban ports held by the Spanish forces, and she cleared, not for Pensacola, but for Santiago. She was not within the letter of the proclamation, nor within the reasons usually assigned for the exemption as pointed out in the opinion of the District Judge, 87 Fed. Rep. 927. She had not left a foreign port in ignorance of the perilous condition of affairs, and innocently taking a course which would subject her to our power by entering one of our ports. Neither was she bringing cargo to this country for the increase of our resources, or the convenience of our citizens. On the contrary, she was sailing from one port to another port of the enemy, and all the cargo she had on board was destined for the enemy's ports. Not only this, but she took on cargo at Havana for Santiago, and was captured while thus actually trading from one enemy port to another enemy port, being herself an enemy vessel. In these circumstances the fact that the *Pedro* was under contract to ultimately proceed, after concluding her visits to the Spanish ports, to a port of the United States, to there load for Europe, did not bring her within the exemption of the proclamation.

The doctrine as to continuity of voyage as laid down by this court in the cases cited by appellant has no application.

In *The Circassian*, 2 Wall. 135, it was ruled that the intent to violate a blockade, found as a fact, was not disproved by evidence of a purpose to call at a neutral port, not reached at time of capture, with ulterior destination to the blockaded port. In *The Bermuda*, 3 Wall. 514, the actual destination to a belligerent port, whether ulterior or direct, was held to determine the character of the transaction as a whole; that transshipment could not change the effect of the pursuit of a common object by a common plan; and that if the cargo was contraband its condemnation was justified, whether the voyage was to ports blockaded or to ports not blockaded; and so

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as to the vessel in the former case. And in *The Springbok*, 5 Wall. 1, it was held that an intention to tranship cargo at a neutral port did not save it when destined for a blockaded port; that as to cargo, both in law and intent, the voyage from London to the blockaded port was one voyage, and that the liability attached from the time of sailing if captured during any part of that voyage. The solution of the question under consideration is not particularly aided by these and like decisions relating to blockade running and the transportation of contraband.

In *The Joseph*, 8 Cranch, 451, the American brig Joseph sailed from Boston with a cargo on freight April 6, 1812, on a voyage to Liverpool, and the north of Europe, and thence directly or indirectly to the United States. She discharged her cargo at Liverpool; then, under British license, she took a cargo from Hull to St. Petersburg, and there received news of the war between the United States and Great Britain. She afterwards sailed from St. Petersburg to London with a cargo consigned to merchants at that port, having delivered which, she sailed for the United States in ballast, and was captured not far from Boston Light, and sent into port for adjudication. Her trading with the enemy rendered her liable to condemnation as prize; but it was contended that the offensive voyage terminated at London, and that she was not taken *in delicto*. The court held, however, that whether her voyage were considered an entire one from the United States to England, thence to St. Petersburg, and thence to the United States, or as two distinct voyages, the homeward voyage being from St. Petersburg to the United States, with a deviation to London, she was captured during the same voyage in which the offence was committed, though after it was committed, and was still *in delicto*.

*The Argo*, 1 Spinks, 375; Spinks' Prize Cases, 52, so much relied on by counsel, was an entirely different case from that presented by this record. The Argo was a vessel belonging to a Russian owner, sailing under Russian colors, and bound on a voyage from Havana to Cork. Her charter party bore date February 7 at Havana, but it was therein stipulated that

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she should load at Havana or Matanzas, demurrage not to be paid for forty-two running days. She took on sufficient ballast at Havana to keep her safe, and left there in February for Matanzas, where her cargo was begun to be put on board February 28 and was completed on March 30, and she cleared from that port April 2. March 29, 1854, the British Order in Council printed in the margin<sup>1</sup> was issued. Dr. Lushington, adhering to the views he had expressed in *The Phoenix*, *supra*, held that the order did not contemplate that the vessel should be *laden* at the date of sailing and that the voyage was commenced at Havana to end in Great Britain, notwithstanding she took cargo at Matanzas.

It was argued that the *Pedro* was not liable to capture and condemnation because British subjects were the legal owners of some and the equitable owners of the rest of the stock of La Compañía La Flecha, and because the vessel was insured against risks of war by British underwriters. But the *Pedro* was owned by a corporation incorporated under the laws of Spain; had a Spanish registry; was sailing under a Spanish

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<sup>1</sup> "Her Majesty, being compelled to declare war against His Imperial Majesty the Emperor of all the Russias, and being desirous to lessen as much as possible the evils thereof is pleased by and with the advice of her Privy Council, to order, and it is hereby ordered, that Russian merchant vessels, in any ports or places within her Majesty's dominions shall be allowed until the tenth day of May next, six weeks from the date hereof, for loading their cargoes and departing from such ports or places; and that such Russian merchant vessels, if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear that their cargoes were taken on before the expiration of the above term: Provided, that nothing herein contained shall extend to or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian Government.

"And it is hereby further ordered by her Majesty, by and with the advice of her Privy Council as aforesaid, that any Russian merchant vessel which, prior to the date of this order, shall have sailed from any foreign port bound for any port or place in her Majesty's dominions, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and that any such vessel, if met at sea by any of her Majesty's ships shall be permitted to continue her voyage to any port not blockaded."

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flag and a Spanish license; and was officered and manned by Spaniards. Nothing is better settled than that she must, under such circumstances, be deemed to be a Spanish ship and to be dealt with accordingly. Story on Prize Courts (Pratt's Ed.) 60, 66, and cases cited. *The Friendschaft*, 4 Wheat. 105; *The Ariadne*, 2 Wheat. 143; *The Cheshire*, 3 Wall. 231; Hall Int. Law, § 169.

These stockholders were in no position to deny that when they elected to take the benefit of Spanish navigation laws and the commercial profits to be derived through discriminations thereunder against ships of other nations, they also elected to rely on the protection furnished by the Spanish flag. Nor can the alleged intention to restore the *Pedro* to British registry, if war rendered the change desirable, be regarded. That had not been done when the *Pedro* was captured.

In conclusion, we are of opinion that the court below did not err in refusing to allow further proofs to be taken. The Spanish ownership was made out, and the facts that the stock of the corporation belonged legally or equitably to British subjects or that the loss of the vessel would be eventually borne by British underwriters were immaterial. Nor was there any doubt as to the movements of the *Pedro* and the trading in which she was actually engaged. The conclusion reached by the District Court could not have been affected by the further proofs desired to be taken.

*Decree affirmed.*

MR. JUSTICE WHITE, with whom concurred MR. JUSTICE BREWER, MR. JUSTICE SHIRAS and MR. JUSTICE PECKHAM, dissenting.

The *Pedro* was a British-built ship, formerly owned and registered in Great Britain. About nine years prior to the 22d day of April, 1898, on which day the ship was captured, she was transferred to a Spanish corporation, took a license from the Spanish Government, and thereafter sailed under the Spanish flag. From the time when she thus became

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a Spanish merchant vessel she followed a course of regular trade by sailing from some port or ports in Europe to some port or ports in the southern part of the United States, touching in so doing at several places in the Island of Cuba. Voyages of this kind were made for about nine years prior to the capture, the vessel usually consuming about three months in both the outward and return voyage, being thus able to make four trips each year between a European port and a port in the United States. On these voyages, as illustrated by the one on which she was engaged when captured, the business secured for the Cuban ports was accessory to the main object of the voyage, which was the procuring of a remunerative cargo in the United States. Prior to the journey to the United States, upon which she was captured, the Pedro had last been at the port of New Orleans in January, 1898, at which time she there paid the tonnage tax imposed by the act of Congress, the payment then made being the fourth for the year beginning March 2, 1897, showing that for the year prior to her capture she had been four times in a port of the United States and paid tonnage at such ports.

The Pedro, being in the port of Antwerp in March, 1898, took cargo for Havana, Santiago and Cienfuegos, in the Island of Cuba. Whilst the vessel was thus at Antwerp taking cargo for the Cuban ports in question, she was, on the 18th of March, 1898, through brokers at Liverpool, chartered by W. S. Keyser & Co., a firm of merchants established in Mobile and Pensacola, to proceed to Pensacola or Ship Island in the United States "*with all convenient speed*," there to take a cargo of lumber to be carried on the return voyage to Rotterdam. The opening clause of the charter described the vessel as now loading in Antwerp for Cuba, and the contract contained the stipulations usual to such agreements. It was provided that the charterers should not be obliged to commence loading the ship at Pensacola or Ship Island before the 5th of May, but that the loading should be completed in sixteen working days, and that if the vessel did not arrive at her point of destination in the United States on or before the 18th day of May, 1898, the charterers should have the

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option of cancelling the contract. Although the vessel had a capacity of about five thousand tons measurement, the cargo which was taken at Antwerp for the Cuban ports was only about two thousand tons, less than half her capacity, and the entire freight on such cargo did not exceed seven thousand dollars, which was barely sufficient to meet the expense of receiving, transporting and delivering. On the other hand, the freight on the lumber to be taken at either the port of Pensacola or Ship Island, at the rates fixed in the charter party, would have amounted to about twenty-five thousand dollars. The ship sailed on her voyage on the 25th of March, 1898. Before doing so she took from the American consul at the port of Antwerp a bill of health as required by the laws of the United States. In this bill of health the vessel was described as one "engaged in Atlantic trade, and plies between Antwerp, Cuba and the United States;" and the consul besides certified that the "vessel has complied with the rules and regulations made under the act of February the 15th, 1893, and that the vessel leaves this port bound for Pensacola in the United States of America via Havana, Santiago and Cienfuegos." She arrived at Havana on the 17th of April, 1898, and there discharged about sixteen hundred tons of her cargo. On the 20th of April she received from the steamer Alava, in the port of Havana, about twenty tons of general cargo destined for Santiago, which the latter vessel had brought from European ports and desired to tranship, the same never having been landed in Cuba. In the afternoon of April the 22d the steamer left Havana in continuance of her voyage. On that morning, in execution of an order received from the President, the American fleet left Key West for the Island of Cuba to establish and enforce a blockade of certain ports in the Island of Cuba which had been proclaimed by the President. The Pedro, some distance outside of the harbor of Havana, met the American fleet and was captured.

There is no just foundation, however, for the contention that in leaving the port of Havana the vessel was violating the blockade, for at the time of her sailing the blockade had

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not been established. Indeed, when the capture took place the fleet was on its way to Havana for the very purpose of initiating the blockade ordered by the proclamation of the President. Whilst it is true that subsequently to the 22d of April Congress passed a resolution declaring that war should be considered as having been flagrant as of the date of the 21st of April, that it was not conceived or known when the vessel sailed from Havana on the 22d that a state of war existed is also demonstrated by the proof, which shows that just prior to the sailing of the Pedro from the harbor of Havana an American ship was allowed to depart from that port, and that shortly after the Pedro left an American steamer, which was likewise in the port of Havana, was also permitted to leave.

Under this state of fact it seems to me that the Pedro was within the exact requirements of the fifth article of the proclamation of the President of the United States, and hence was not subject to capture and condemnation. The article in question is as follows:

"5. Any Spanish merchant vessel which prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded."

The theory from which it is deduced that the Pedro was not a Spanish merchant vessel "which prior to April 21, 1898," had "sailed from any foreign port bound for any port or place in the United States," is not by me understood. She assuredly sailed from Antwerp prior to the 21st of April, 1898; she certainly was bound for a port in the United States, since she was under a charter to American citizens, by the terms of which she was obliged "to proceed with all convenient speed" so as to arrive at Pensacola or Ship Island by May 5, 1898, where she was to take on an American cargo to be carried to the port of Rotterdam. The vessel beyond question took a bill of health from the American consul at Antwerp, describing her as one engaged in Atlantic trade, and plying between



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Europe and the United States, and the American consul certified that she was leaving the port of Antwerp bound for Pensacola in the United States via Havana, Santiago and Cienfuegos. Under these conditions she came, in my conception, not only within the letter of the fifth article of the proclamation, but also within its plain intent. The object of the proclamation was to relieve Spanish merchant vessels coming in the regular course of a commercial voyage to our ports from, without warning and without opportunity of returning to a port of safety, being captured and condemned as prize of war in consequence of the breaking out of hostilities subsequent to the inception of the voyage which the vessel was engaged in prosecuting. In this respect the proclamation was but a practical execution of the enlightened policy by which civilized countries, on the breaking out of hostilities, have relieved merchant vessels, coming to one or the other of the belligerent countries, from being subject to capture when, before the happening of war, they had undertaken a lawful voyage in the prosecution of purely commercial duties and relations. The scope of the proclamation is shown by a consideration of the fourth and the fifth clauses together, the one providing for the right of an enemy's vessel found in a port of the United States at a time covered by the clause, to load cargo and depart without molestation, even although bound to a port of the enemy, and the provision of the fifth article which protects from seizure and condemnation the merchant vessels of the enemy which had sailed bound for any port of the United States prior to the period mentioned in the proclamation.

But, it is said, when the *Pedro* left Havana on the afternoon of the 22d she was not bound for Ship Island or Pensacola in the United States, but was bound for Santiago, therefore she was on a voyage between two ports of the enemy, and was not within the fifth article of the proclamation. This, however, treats the voyage from Havana to Santiago as a new and wholly independent one from that which commenced at Antwerp. It disregards the fact that the vessel had sailed from Antwerp for Pensacola or Ship Island via Havana and the other ports named; it overlooks that the ship was under

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express charter to American citizens, when she left Antwerp, to proceed to Pensacola or Ship Island, and it further ignores the certification by the consul already referred to. To treat the voyage from Havana to Santiago as a new and independent one, moreover, fails to give weight to the proof showing that the touching at the Spanish ports in the Island of Cuba was merely incidental to the main voyage from Antwerp to the United States. It also does not apply the cumulative proof arising from the long and regular course of business in which the ship had been engaged for nine years prior to her capture in making regular trips from ports in Europe to ports in the United States via designated ports in the Island of Cuba. The decisions of this court, also, I think, refute the contention that the ultimate termination of an outward voyage may be disregarded, in order to create a new voyage because of the touching of a vessel at an intermediate port. The rule, consecrated by the previous decisions of this court, according to my understanding, is that the real intention of a vessel as to her outward bound port is the determining factor in concluding whether in consequence of her voyage she is or is not subject to capture as lawful prize. In *The Joseph*, 8 Cranch, 451, 454, 455, the vessel being a merchant vessel of the United States, with full knowledge of the war (1812) between the United States and England, carried a cargo from St. Petersburg to London. After discharging the cargo at the latter point she started in ballast for New York, her home port, and was captured and proceeded against for the offence of trading with the enemy. The defence was that the voyage had terminated on the arrival of the vessel in London, and that from London to the United States she was on a new voyage, and therefore not subject to capture and condemnation for an offence committed on a previous voyage. The court, through Mr. Justice Washington, said :

"It is not denied that if she be taken during the same voyage in which the offence was committed, though after it was committed, she is considered as being still *in delicto*, and subject to confiscation; but it is contended that her voyage ended at London, and that she was on her return embarked

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on a new voyage. This position is directly contrary to the facts in the case. The voyage was an entire one from the United States to England; thence to the north of Europe; and thence, directly or indirectly, to the United States. Even admit that the outward and the homeward voyages could be separated so as to render them two distinct voyages, which is not conceded, still it cannot be denied that the termini of the homeward voyage were St. Petersburg and the United States . . . It was, in short, a voyage from St. Petersburg to the United States by way of London."

In *The Circassian*, 2 Wall. 135, a vessel sailing from one neutral port directly to another port of the same character was condemned, because it was found that the real and ultimate destination of the ship was a blockaded port in the United States. In *The Bermuda*, 3 Wall. 514, a vessel with cargo from one neutral port to another neutral port was condemned, as it was held that the real object of the voyage was to transport contraband of war by the vessel from one neutral port to the other with the object and purpose of continuing the transportation from the neutral port, to which the vessel was consigned, into the United States through the lines of a lawfully established blockade, the court deciding that the real purpose and intent as to the ultimate destination of the ship and its contraband cargo should control in determining the legality of the capture. In speaking on the subject, through Mr. Chief Justice Chase, the court said (p. 553):

"It makes no difference whether the destination to the rebel port was ulterior or direct; nor could the question of destination be affected by transshipment at Nassau, if transshipment was intended, for that could not break the continuity of transportation of the cargo. The interposition of a neutral port between neutral departure and belligerent destination has always been a favorite resort of contraband carriers and blockade runners. But it never avails them when the ultimate destination is ascertained. A transportation from one point to another remains continuous, so long as intent remains unchanged, no matter what stoppage or transshipment intervenes."

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Applications of this doctrine are contained in the following cases: *The Hart*, 3 Wall. 559; *The Springbok*, 5 Wall. 1; *The Peterhof*, 5 Wall. 28. I do not understand that in the opinion of the court now announced the cases just cited have been overruled. They stand, therefore, and must be reconciled with the decision made in this case. This being so, the doctrine, from my point of view, may now be thus summed up. Where there is a question as to the condemnation of a vessel as lawful prize, the fact that, between her point of departure and her point of ultimate destination, she has touched or unladen her cargo or a portion thereof at an intermediary port, will not be considered as breaking the continuity of the voyage or as destroying the ulterior destination, and therefore if that destination be unlawful the voyage will be continuous from the point of departure to such ulterior destination, and the vessel will consequently be condemned. These rules are subject to the following exceptions: Where it becomes necessary to disregard the foregoing principles as to ulterior destination they will be given no weight, and the voyage will be treated as having terminated at an intermediary point, and consequently the vessel will be condemned because the voyage was not continuous. The result being, in any event, to subject the vessel to condemnation.

It is, however, urged, conceding that the ultimate destination controls, and therefore that the stoppage at the intermediary port was of no consequence, as under the charter party the *Pedro* was bound to proceed to Pensacola, there to take on a cargo, to be delivered at Rotterdam, even under the doctrine of continuous voyage, her voyage must be treated as continuous from Antwerp via Havana, etc., to Pensacola, thence to Rotterdam; that is to say, the continuous voyage, as manifested by the charter party, was from Antwerp to Rotterdam via Pensacola, hence the ship was never bound for the United States. But this obliterates the manifest distinction between the outward and return voyage, which is apparent in the text of the fifth article of the proclamation.

Even conceding that from some points of view the round voyage, that is, both the outward and return trip, should be

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considered as being continuous, such concession cannot in reason be the test for determining whether under the proclamation the vessel was *bound* for the United States. If it be held that both the inward and the outward voyage are to be taken under the proclamation as the criterion for determining whether a vessel was bound for the United States, it would follow that the proclamation had no relation whatever to any foreign ship, other than such a ship bound to a port of the United States without the intention of departing, that is, with the intention of remaining in the port of the United States. The proclamation, however, provides that the vessels bound for the United States to which it refers "shall be permitted to enter such port or place, and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded." This plainly distinguishes between the voyage on which the vessel is bound for the port of the United States and the voyage to be undertaken by the vessel from the port of the United States to which she is bound back to her homeward or some other neutral port. To construe the proclamation so as to cause it to embrace only vessels bound for the United States without any purpose of thereafter departing, would exclude from its operation the entire class of vessels it was its purpose to protect from condemnation. The error of such a consideration becomes to my mind plain, especially when it is borne in mind that it is conceded on all sides that the proclamation should receive a liberal construction in favor of the public purpose which it embodies, and against the liability of innocent and unwarned private property to capture and condemnation.

It was strenuously argued at bar, and, as I understand the opinion of the court, it is now held, that the *Pedro* was not embraced within the fifth article of the proclamation because she did not have cargo for the United States. The object of the fifth clause of the proclamation, it was said, was to allow vessels with cargo bound for the United States to be free from capture, because it was the public policy of the United States, on the outbreak of war, to encourage the bringing in

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of cargo. The text of the proclamation does not, however, support this contention. It declares that all vessels which "have sailed from any foreign port bound for any port or place in the United States shall be permitted to enter such port or place . . ." It does not say all vessels which have sailed with cargo, but that all vessels shall be so permitted. True it is that the proclamation also authorizes the vessel thus permitted to enter to discharge her cargo. But the mere adding to the permission to enter, the right to discharge cargo, cannot be taken as denying permission to enter, if there be no cargo to discharge. It cannot in any event be said that the proclamation in plain terms confers the privilege of safe entry only on vessels having cargo; and if it does not, then construction is required, and the rule is that a liberal construction must be applied in order to protect the innocent private vessel from capture and condemnation. This supposed theory of the desire to encourage the bringing in of cargo, upon which it is assumed that the fifth article of the proclamation rests, entirely discards or at least ignores the enlightened moral sense which the proclamation embodies, that is, the duty not to capture without warning merchant vessels bound to our shores previous to the outbreak of war, and substitutes for it what to me seems the sordid motive of a supposed gain to result from incoming cargo. In other words, in its last analysis, the contention that the proclamation contemplates only exempting a vessel from seizure which has cargo for the United States, really asserts that fair dealing and justice are embodied in the proclamation only so far as it was deemed that profit might be derived from being just, and no further. Such an interpretation of the proclamation, however, is refuted by its very terms, since its preamble declares that its object was to mitigate the wrongs of war in accordance with the practice pursued by enlightened and civilized nations. Aside from these considerations, the supposed advantage to be derived from allowing cargo to come in, when considered intrinsically, is without force. Under this theory, two vessels would depart on the same day from a foreign port; one bound to a port in the United States, with

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cargo, under a charter to foreign citizens to convey their goods into this country; the second ship proceeding in ballast under charter to American citizens to proceed to the United States and there take cargo. The argument is that the vessel chartered to the foreigner and containing his goods in the execution of his contract would be exempt from capture, whilst the vessel sailing in order to carry out the contract made with and in favor of an American citizen would be subject to capture. But this contention as to cargo is not only in conflict with the text of the fifth article, but is also at war with another provision of the proclamation—that is, the fourth article. By that article a Spanish vessel found in a port of the United States, as therein stated, is not only allowed to depart, but is also accorded the privilege of taking on cargo and carrying it either to a neutral port or to a port of the enemy, if not blockaded, up to a stated date without molestation. But the language conferring the privilege of loading cargo contained in the fourth article, whilst really only permissive, must be construed as imperative, if the permissive privilege to discharge cargo in the fifth article be held an imperative one, for no distinction can be drawn between the two. The argument then comes to this, that the public policy of the proclamation deemed the coming in of cargo so important that it provided for the capture of all vessels sailing for ports of the United States prior to the commencement of war, if they did not have cargo, and that the same public policy considered the taking away of cargo from the United States so important that the privilege given in the fourth article to Spanish merchant vessels in our ports to depart could be availed of, provided only they took cargo away from the United States. An interpretation which gives rise to so unreasonable a contradiction seems to me to demonstrate its own unsoundness.

But all the considerations which are relied on as justifying the condemnation in this case seem to me to be fully answered by authority. Both the fourth and fifth articles of the proclamation of the President were almost word for word a reproduction of the British Order in Council of March 29, 1854,



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issued at the outbreak of the Crimean war. In order that the identity of the two may be at once apparent they are both reproduced, in juxtaposition, in the margin.<sup>1</sup>

Under the Order in Council just alluded to, the *Argo*, a Russian vessel, and therefore a vessel of the enemy, sailed from Havana for Matanzas, Cuba, there to take on cargo for

<sup>1</sup> *President's Proclamation of April 26, 1898* (30 U. S. Statutes at Large, 1770).

4. Spanish merchant vessels, in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government.

5. Any Spanish merchant vessel which prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

*Order in Council, March 29, 1854* (*Spinks Prize Cases, Appendix iii*).

Russian merchant vessels, in any ports or places within her Majesty's dominions, shall be allowed until the tenth day of May next, six weeks from the date hereof, for loading their cargoes and departing from such ports or places; and such Russian merchant vessels, if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing herein contained shall extend to or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any dispatch of or to the Russian Government.

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Any Russian merchant vessel which, prior to the date of this order, shall have sailed from any foreign port bound for any port or place in her Majesty's dominions, shall be permitted to enter such port or place and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

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Great Britain. The departure of the vessel from Havana in ballast was prior to the date fixed by the Order in Council. After arriving at Matanzas she there took on cargo, and sailed from that port for Great Britain, subsequent to the date fixed in the Order in Council. She was captured, and the question of her condemnation was considered and decided by Dr. Lushington. It was held that the vessel was protected by the Order in Council, and she was released. Necessarily, under the facts stated, the ultimate end of the outward voyage to Great Britain, and not the intermediary port at which the *Argo* stopped, controlled; otherwise she would have been subject to condemnation. This follows, as the order in terms only protected Russian merchant vessels which had sailed prior to the date of the order. As the sailing for Great Britain from Matanzas was subsequent to the order, it necessarily results that the date of sailing relied upon as protecting was the date of the sailing from Havana, and not the subsequent departure from the intermediate port. So, also, the case necessarily decided that the presence of cargo was not essential to entitle the vessel to protection under the Order in Council, since the vessel sailed in ballast from Havana, and only departed from Matanzas, where the cargo was taken on, after the date of the order, and therefore at a time and under conditions which would not have protected her unless the antecedent conditions existing at the time of the sailing had been considered as determinative.

The language of Dr. Lushington, in passing upon the case, is to my mind so persuasive of the issues which arise upon this record, that I quote from it. He said (*Spinks' Prize Cases*, p. 53):

"This vessel did sail from the Havannah prior to the date of the Order; she sailed from Matanzas subsequently to the date of the Order. When she left the Havannah she was in ballast bound for Cork, according to the charter party.

"It has been contended that this Order in Council contemplated that the Russian vessel should have been laden at the date of the Order; but I find no words in the Order that would justify my putting so strict a construction upon it;

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neither do I think that there are any words which impose the necessity of not touching at or taking a cargo at some other port than that where the voyage commenced. For instance, I apprehend that a vessel might have taken in a part of her cargo from one foreign port, having left that port prior to the 29th of March, and taken in another part of the cargo at another foreign port subsequently.

"The real meaning of the Order in Council, according to my view of it, is, that the vessel shall have sailed prior to the 29th of March, on a voyage to end in Great Britain, and I am clearly of opinion that this was one continuous voyage, the commencement of which was at the Havannah, and that the sailing from Havannah prior to March the 29th is a substantial compliance with the terms of the Order."

Some stress was laid in argument, and seems to be given weight in the opinion of the court, to the language of Dr. Lushington referring to the taking on of the cargo. But, clearly, from the text of his opinion, this language was used in relation to the argument presented to him, which was that although a vessel sailing in ballast, without cargo, prior to the date of the Order in Council, was admittedly within its purview, the *Argo* was not covered by it, because subsequent to the proclamation she took on her cargo at an intermediate port. In meeting this argument the question of cargo was referred to, and the whole purport of the Order was summed up in language which I again quote. It was as follows:

"The real meaning of the Order of Council, according to my view of it, is, that the vessel shall have sailed prior to the 29th of March, on a voyage to end in Great Britain, and I am clearly of opinion that this was one continuous voyage, the commencement of which was at the Havannah, and that the sailing from Havannah prior to March the 29th is a substantial compliance with the terms of the Order."

The sailing from Havana, thus decided to have been sufficient, I again remark, was in ballast and without cargo.

This construction of the Order in Council, I have said, should be persuasive, indeed, if it should not be held to have been adopted and ratified by the reproduction in the procla-

## Counsel for Parties.

mation of the President of the very language of the Order in Council, so many years after that order had been thus construed by the British Admiralty tribunal.

Thinking that the condemnation of this ship under the circumstances disclosed by the record will subject innocent private property to condemnation without just cause, will deprive it of the protection afforded by the proclamation of the President, which, according to its terms, but carried out those commendable principles of honesty and humanity, enforced by all civilized nations on the outbreak of war, I am constrained to dissent.

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